S. Hrg. 101-445

NOMINATIONS—NOVEMBER

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

NOMINATIONS

NOVEMBER 9, 1989

DEBORAH WINCE-SMITH, TO BE ASSISTANT SECRETARY OF COMMERCE FOR TECHNOLOGY POLICY, DEPARTMENT OF COMMERCE

NOVEMBER 16, 1989

EDWARD M. EMMETT, TO BE A COMMISSIONER, INTERSTATE COMMERCE COMMISSION AND JACQUELINE JONES-SMITH, TO BE CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

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NOMINATION—NOVEMBER

THURSDAY, NOVEMBER 9, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m., in room SR-253, Russell Senate Office Building, Hon. Albert Gore, Jr. presiding.

Staff members assigned to this hearing: Pat Windham and Becky Kojm, professional staff members; and Ruth Johnson, minority professional staff member.

OPENING STATEMENT BY SENATOR GORE

Senator GORE. The committee will come to order.

I want to welcome our guests and Deborah Wince-Smith to this hearing on the nomination of Deborah Wince-Smith to be Assistant Secretary of Commerce for Technology Policy.

Last year, Congress consolidated the technology programs of the Department of Commerce into a new technology administration. The Assistant Secretary for Technology Policy now serves as the principal policy analyst for the Under Secretary for Technology and the Secretary of Commerce.

The Assistant Secretary also oversees a small but important staff of analysts and business experts.

The position takes on special importance this year. Congress and the last administration recognized the growing challenge to this nation's technological leadership when they wrote the technology portions of last year's Omnibus Trade and Competitiveness Act. Now it is up to the current administration to implement that new law.

Frankly, I have been somewhat disappointed that the President and the administration have not moved faster on such key issues as high definition television and high performance computing. The Bush Administration's technology policy, what some have called a non-policy, will be a focus during today's hearing.

Ms. Wince-Smith comes to this position after five years at the Office of Science and Technology Policy, the last three as OSTP's Assistant Director for International Affairs and Global Competitiveness. Prior to that service, she spent eight years in the division of international programs at the National Science Foundation.

Let me welcome you, Ms. Wince-Smith, and note that in the audience today are your husband, former Deputy U.S. Trade Representative, Michael Smith, whom we welcome, and your sister, Pamela Grunder. And I am delighted to meet both of you and am pleased that you are here today.

I have a statement that Senator Hollings would like to have included in the hearing.

[The statement, biographical sketch, and questions and answers follow:]

Opening Statement by the Chairman

This country's technological position continues to deteriorate, and with it the industrial strength that built our prosperity and safeguarded our national security. According to the Defense Department, the Japanese now lead us in six critical technologies, including microelectronic circuits, robotics, and optics. Others will surely follow unless we act to reverse this trend. We already have seen many of our industries, most recently semiconductors, shrink under the onslaught of targeting by foreign governments and companies.

So far, the Bush White House has shown absolutely no concern about this situation. Early this year, Secretary Mosbacher noted the importance of such areas as high-definition television and related technologies, but the senior White House criticized him greatly. To make a bad situation worse, the Defense Department reportedly wants to terminate its programs to keep the United States competitive in technology. According to one press report, they like the idea of buying from the Japanese and helping Japan build "an economic empire." Is it possible that some officials in this Administration are more interested in promoting Japan's economic strength than in promoting America's?

If there is one agency of government that can and should promote the health of American industry and prosperity, it is the Department of Commerce (DOC). In my view, it is time to put the Commerce Department back into promoting commerce. They long have had all the trade and economic analysis authorities they need. Now they also have all the necessary authority to help industry regain technological preeminence; we saw to that last year when we upgraded the programs of the old National Bureau of Standards and consolidated DOC's technical programs into the new Technology Administration.

Within that Technology Administration, the Assistant Secretary for Technology Policy plays a critical role. The Assistant Secretary is a key advisor—the policy analyst responsible for studying problems, developing options, and making recommendations to the Under Secretary for Technology and to the Secretary and the President.

Today the Committee will hear from the President's nominee for this important post, Ms. Deborah Wince-Smith. I am interested in her views on the many important technology competitiveness issues facing our Nation.

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN

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United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Wince-Smith (Last) Deborah (First) Lynne (Other)

Address: 1315 Merrie Ridge Road
McLean, VA 22101
(Current residence)
(Business)

2. Position to which nominated: Assistant Secretary for Technology Policy

Date of nomination: June 14, 1989

3. Date of birth: October 26, 1950 (month) (day) (year)

Place of birth: Akron, OH 44303

4. Marital status: Married

Full name of Spouse: Michael Brackett Smith

5. Names and ages of children: None

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Old Trail School Bath, OH	1965-1968	High School	1968
Vassar College, Poughkeepsie, NY	1968-1972	A.B.	1972
College Year in Athens, Greece	1970-1971	Junior Year Abroad Program	
Cambridge University, U.K.	1973-1974	Post-Graduate	1974
		Diploma (Equivalent of U.S. Master's Degree) in Classical Archeology	

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
6/74	9/74	Lord William Taylour	Great Shelford, UK	Research staff member on Aghios Stephanos Archeological Excavation in Laconia, Greece
6/75	10/75	Weldon Sullinger	Athens, Greece	Curriculum Consultant to International Education Consulting firm on Greek civilization program
10/76	present	Federal Government Service	Listed under Item 8	

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

3/89 - present	Department of Commerce, Consultant to the Under Secrtary for Technology
1/86 - 3/89	White House Office of S&T Policy, Assistant Director for International Affairs and Global Competitiveness
12/84 - 1/86	White House Office of S&T Policy, Senior Policy Analyst
9/80 - 12/84	National Science Foundation, Program Manager, Div. of Int'l Programs
5/79 - 9/80	National Science Foundation, Asst. Program Manager, Eastern European Programs, Division of International Programs

(continued)

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

NONE

Deborah Wince-Smith

Item 8. (Continued)

10/76 - 5/79	National Science Foundation, Professional Assistant to U.S.-Poland and U.S.-Yugoslavia Programs, Division of International Programs

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

Phi Beta Kappa, Elected in 1972 at Vassar College

Vassar Club of Washington, D.C.

The Cambridge University Society

Junior League of Washington, D.C., Recording Secretary, 1980

Marblehead Historical Society, Marblehead, Mass.

Ipswich Historical Society, Ipswich, Mass.

Peabody Museum of Art, Salem, Mass.

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Commendation Letter from President Reagan, 1989; Commendation Letter from President Reagan, 1988; National Science Foundation Superior Accomplishment Award, 1988; OSTP Outstanding Performance Ratings- 1985, 1986, 1987, 1988; National Science Foundation Service Award, 1984; National Science Foundation Outstanding Performance Rating and Quality Increase, 1982; National Science Foundation Quality Increase, 1981; National Science Foundation Special Achievement Award, 1979; William Rana Kennedy Prize, Kings College, Cambridge, 1974; The Maguire Vassar Fellowship, 1973; (continued)

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

I. Publications and writings for U.S. Government use

II. Article entitled "United States International Science and Technology Policy: A Balance Approach"; Issue II, AAAS Bulletin on Access to Scientific and Technical Information (Copy attached) Winter 1989

Deborah Wince-Smith

Item 11. Honors and Awards (continued)

A.B. Degree, Vassar College, Phi Beta Kappa, General and Departmental Honors; Magna Cum Laude, 1972; College Year in Athens Fellowship, 1970; Valedictorian, Old Trail School, 1968.

PREHEARING QUESTIONS ON THE NOMINATION
OF
DEBORAH WINCE-SMITH
TO BE
ASSISTANT SECRETARY OF COMMERCE FOR
TECHNOLOGY POLICY

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE
NOVEMBER 9, 1989

1. Public Law 100-519 amends the Stevenson-Wydler Act to provide for "an Assistant Secretary of Commerce for Technology Policy, who shall serve as policy analyst for the Under Secretary." The post of Assistant Secretary thus has important analytical responsibilities, although it does not have authority over the operational programs of the Technology Administration. If confirmed as Assistant Secretary, what will be your principal duties and activities? Do you agree that your role and the role of your office will be analytical?

A. As its organic legislation provides and its title implies, the Assistant Secretary for Technology Policy will be the Under Secretary's principal source of policy development within the Technology Administration. However, it is probably unrealistic and unwise to try to confine the Assistant Secretary to a pure "policy" role. If the Assistant Secretary is to be a truly effective voice for commercial technology interests, he or she will also have to play a strong advocacy role, will have to reach out to the private sector to make sure that its needs and interests are factored into policy deliberations, consult with Congress, and work with other agencies to help them design and implement programs that further our Nation's technology goals. The lines between "policy formulation," "advocacy" and "program implementation" are not always precise.

The Department's federal technology management initiative illustrates this. Personnel who now constitute part of the core of the new Assistant Secretary's work force worked closely with the Congress to design and develop many of the policies and concepts that are now embodied in the various federal statutes (e.g., the Bayh-Dole Act, the Federal Technology Transfer Act) that form the basis of our current efforts to promote the full commercialization of federally-funded or federally-performed research. This was a fairly new and controversial idea. These same people who helped design and develop the appropriate policies also had to work vigorously to get them accepted. They were also the best equipped to provide agencies with technical advice and assistance in order to make these new policies work, to monitor and report on agency implementation of these new authorities, and to provide an interagency coordinative mechanism for identifying and resolving on-going policy issues.

I believe we would be much further behind in our technology transfer program had we taken the view that their involvement, or that of the Assistant Secretary, should end with the "policy formulation" stage.

2. The analytical activities of the Assistant Secretary focus primarily on industry, industrial technology, and manufacturing. Please state how your background and experience qualify you for this position.

A. As my resume indicates, my experience includes thirteen years of federal service, first as a Program Manager at NSF and more recently as Assistant Director for International Affairs and Global Competitiveness at OSTP. Those years have prepared me for this important position in several ways.

They have exposed me to a broad array of difficult policy issues which have become increasingly complex as the challenges to our technological leadership have grown. They have enabled me to obtain substantial, practical, hands-on experience in identifying, evaluating and recommending courses of action to improve our technology infrastructure. They have given me the opportunity to work with highly talented people at all levels, from bench scientists to Presidential advisers, from dedicated public servants to important leaders of industry. They have taught me the mechanics of the Federal Government's policymaking apparatus at its highest levels and how to be an effective part of it. They have made me acutely aware of the challenges that face us and have heightened my sensitivity to the importance of factoring foreign technological policies, practices and developments into U.S. technology policymaking.

My years with the President's Science Adviser were particularly gratifying in that they gave me an opportunity to contribute to President Reagan's 1987 Competitiveness Initiative and his Executive Order on facilitating access to science and technology. These initiatives involved the development of important new policies on technology transfer; on forging partnerships between universities, federal laboratories, industry, and state and local governments in important emerging technologies, such as superconductivity; and in negotiating fair and equitable international science and technology agreements aimed at increasing our access to foreign research results, providing reciprocal research opportunities for U.S. scientists and engineers, and protecting intellectual property rights, objectives that are also reflected in the Omnibus Trade and Competitiveness Act of 1988.

All of this gives me the experience and broad perspective necessary for discharging the duties and responsibilities of this important position.

3. Secretary Verity's Department Organization Orders split the old Office of Productivity, Technology and Innovation (OPTI) into two new entities - the Office of the Assistant Secretary for Technology Policy and the Office of Commercial Affairs - and then placed them both under the authority of the new Under Secretary for Technology. I understand, however, that Secretary Mosbacher is considering whether to re-combine the two offices and place them both directly under the Assistant Secretary for Technology Policy.

- What specific new management is under consideration, and what would be the name and organization of the new unit reporting to the Assistant Secretary?
- When will Secretary Mosbacher make a decision on whether to change the existing organization?

A. I understand the previous Administration refrained from formally codifying the earlier structure so as to afford the new Administration maximum flexibility in devising workable arrangements. Concerns have been raised about the practicality of the earlier plan.

Several problems have been noted. The distinctions between policy, advocacy and program implementation are often imprecise. But the reasons go beyond that. Some feel that the proposed duality would deprive each office of the critical mass so essential for the success of either. It would erect artificial walls where we should seek to encourage the fullest possible exchange of ideas, information and professional cooperation. It would make it very difficult to obtain maximum efficiency from a limited number of technology professionals, each of whom must on occasion be called upon to wear more than one "hat." Finally, it would expand the number of "autonomous" units reporting to the Under Secretary, thereby unnecessarily bureaucratizing what should be an efficient organization.

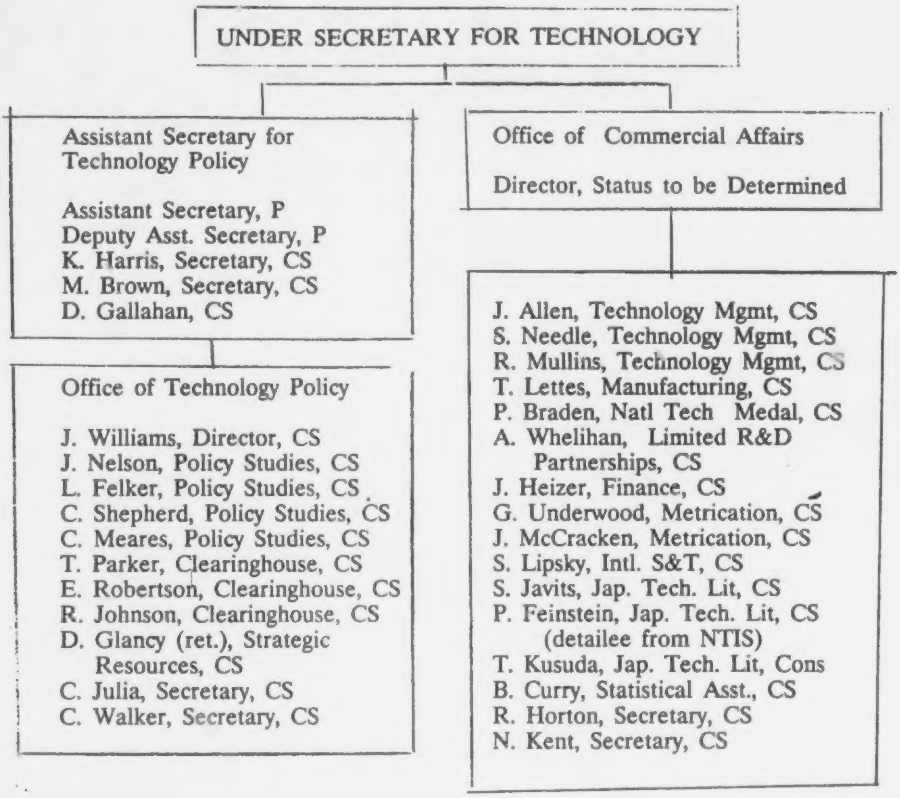
An alternative arrangement under consideration is described in response to Question 4.

I do not know what approach the Secretary will take. I am sure the Department will notify the Committee in accordance with established procedures and legal requirements if he concludes that the earlier organization proposal should be modified.

4. How many employees and consultants now work in or for the Office of Technology Policy and the Office of Technology Commercialization, and how are the two offices currently organized? (Please attach to your answer both (i) an organization chart describing the current arrangement, and (ii) a list which briefly states the name of each professional in the two offices, that person's main area of responsibility, and whether the person has civil service, political appointee, or consultant status. Please also list professionals from other parts of the Department who are temporarily serving in the two offices.)

A. There are currently thirty-one full time employees in the Office of the Assistant Secretary, of which three are political and the remainder are career civil servants. In addition, there is one detailee from NTIS, five detailees from NIST, and one contract consultant. Their assignments are described in the attached charts. The first chart describes placement under a plan proposed by the previous Administration. The second describes placement under an alternative now being considered.

If Organized as Initially Proposed:



UNDER SECRETARY FOR TECHNOLOGY

Assistant Secretary for Technology Policy

Assistant Secretary, P
Deputy Asst. Secretary, P
K. Harris, Secretary, CS
M. Brown, Secretary, CS
D. Gallahan, CS

Office of Technology Policy

J. Williams, Director, CS
J. Nelson, Policy Studies, CS
L. Felker, Policy Studies, CS
C. Shepherd, Policy Studies, CS
C. Meares, Policy Studies, CS
T. Parker, Clearinghouse, CS
E. Robertson, Clearinghouse, CS
R. Johnson, Clearinghouse, CS
D. Glancy (ret.), Strategic Resources, CS
C. Julia, Secretary, CS
C. Walker, Secretary, CS

Office of Commercial Affairs

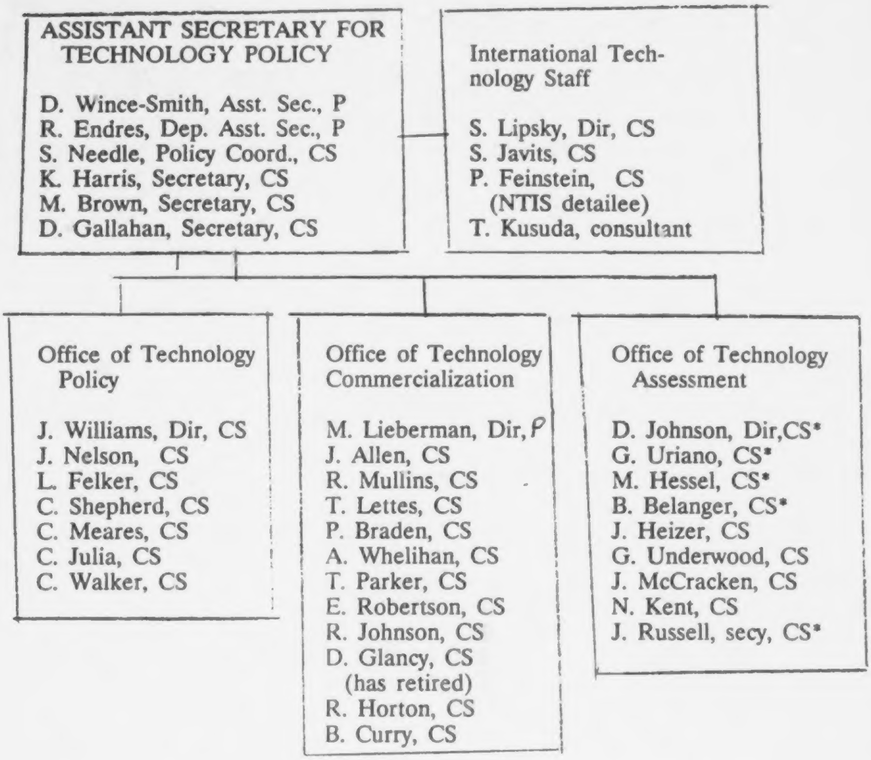
Director, Status to be Determined

J. Allen, Technology Mgmt, CS
S. Needle, Technology Mgmt, CS
R. Mullins, Technology Mgmt, CS
T. Lettes, Manufacturing, CS
P. Braden, Natl Tech Medal, CS
A. Whelihan, Limited R&D Partnerships, CS
J. Heizer, Finance, CS
G. Underwood, Metrication, CS
J. McCracken, Metrication, CS
S. Lipsky, Intl. S&T, CS
S. Javits, Jap. Tech. Lit, CS
P. Feinstein, Jap. Tech. Lit, CS (detailee from NTIS)
T. Kusuda, Jap. Tech. Lit, Cons
B. Curry, Statistical Asst., CS
R. Horton, Secretary, CS
N. Kent, Secretary, CS

Comments:

1. P = political, CS = civil service, Cons = consultant
2. NIST detailees, if any, to be determined by Under Secretary

Alternative Organization Proposal:



ASSISTANT SECRETARY FOR TECHNOLOGY POLICY

D. Wince-Smith, Asst. Sec., P
R. Endres, Dep. Asst. Sec., P
S. Needle, Policy Coord., CS
K. Harris, Secretary, CS
M. Brown, Secretary, CS
D. Gallahan, Secretary, CS

International Technology Staff

S. Lipsky, Dir, CS
S. Javits, CS
P. Feinstein, CS
(NTIS detailee)
T. Kusuda, consultant

Office of Technology Policy

J. Williams, Dir, CS
J. Nelson, CS
L. Felker, CS
C. Shepherd, CS
C. Meares, CS
C. Julia, CS
C. Walker, CS

Office of Technology Commercialization

M. Lieberman, Dir, P
J. Allen, CS
R. Mullins, CS
T. Lettes, CS
P. Braden, CS
A. Whelihan, CS
T. Parker, CS
E. Robertson, CS
R. Johnson, CS
D. Glancy, CS
(has retired)
R. Horton, CS
B. Curry, CS

Office of Technology Assessment

D. Johnson, Dir,CS*
G. Uriano, CS*
M. Hessel, CS*
B. Belanger, CS*
J. Heizer, CS
G. Underwood, CS
J. McCracken, CS
N. Kent, CS
J. Russell, secy, CS*

* NIST detailees specializing in technology assessment/evaluation

5. Two important programs are the Japanese Technical Literature Program and the Clearinghouse on State and Local Initiatives on Productivity, Technology and Innovation. Please provide a brief description of the current status of these two programs, including the number of staff in each, the major products and accomplishments of each over the past year, and plans for them in the future. (Please also attach a summary budget table, listing for FY 1989 the number and names of employees in each program, the costs of salaries and benefits for these employees, and other expenditures for contracts, travel, and publications.)

A. The Clearinghouse and Japanese Technical Literature (JTL) Programs are and will continue to be important cornerstones of the new Technology Administration.

The Clearinghouse: The Department has just received recommendations from the Advisory Commission on Intergovernmental Relations (ACIR) as to how the Clearinghouse effort should be structured if it is to achieve maximum use of its resources and avoid duplication of effort. If confirmed, one of my first priorities would be to oversee the review of the recommendations and to implement those we deem to be most important.

During FY 1989, Clearinghouse activities focused on the following: (a) obtaining the advice and assistance of the ACIR; (b) establishing contacts and arranging meetings with state and local government representatives, university and college administrators, federal agencies, business leaders and Congressional staffs; (c) developing issue papers on trends in state and local technology promotion and economic development programs, the federal technology transfer process, the experiences of other clearinghouses, and identifying sources of information of use to small technology-based companies; (d) developing initial databases of state initiatives and categorizing contact lists; (e) developing an analysis and bibliography of 19 different directories of state technology development programs; and (f) developing plans for FY 1990.

Plans for FY 1990 include increased outreach, further analysis of the directories, compiling information on State strategies to promote manufacturing, and compiling information on methods for documenting and evaluating state and local programs.

FY 1989 funding included salaries of three full time professionals (E. Robertson, T. Parker and E. Johnson) as follows: Salaries ($193,000), Benefits ($27,000) and Office space and telephones ($30,000), for a total of $250,000).

Japanese Technical Literature: The JTL Program is one of our most vital programs. Our Deputy Secretary has just chaired an extended meeting on how best to leverage the funds allocated to it. We will certainly keep the Committee informed of our plans and progress. The program manager, detailee, and contract consultant working on the program are dedicated to its success. They will provide invaluable advice and assistance to the Department by helping us to identify possible projects for collaboration pursuant to the 1988 Head of Government Science and Technology

Agreement between the United States and Japan.

During FY 1989 the JTL Program prepared reports on R&D in biotechnology-related industries in Japan, recombinant DNA research in Japan, and basic research in superconductor sciences in selected Japanese laboratories. Additional reports on tapping Japanese database resources and the heating, ventilation and air conditioning (HVAC) industry are in progress. It was also a joint sponsor of the Japan Technology Evaluation (JTECH) Program reports which are produced under NSF auspices.

Other activities included the translation of various reports on important high technology trends such as factory automation, CAD/CAM, intelligent referencing systems, video-casting technology, as well as MITI's important report on Industrial Technology Trends and Developments. It has prepared a number of issues of the Japanese Technical Literature Bulletin and has also sponsored seminars and conferences on high technology materials in Japan, Japanese-to-English machine translation, and superconductive and semiconductive ceramic research.

If confirmed, I would like to see the JTL staff concentrate on better defining the program audience and objectives. It is an excellent program but it may be possible to do an even better job of tailoring it to meet user needs. It may be appropriate to expand our outreach efforts and focus more on manufacturing and other critical enabling technologies. It may also believe be appropriate to concentrate a bit more on translating and disseminating "big picture" Japanese government and industry documents with major implications for policymakers and industries.

FY 1989 funding included the salaries of two full time professionals, S. Javits and S. Lipsky, and one contract consultant, T. Kusuda. One NTIS employee was provided on a non-reimbursible basis. FY 1989 funds included salaries ($92,000), benefits ($16,000), consultant services ($50,000), conferences ($30,000), travel and printing ($8,500), rent ($29,000), overhead ($12,000), and management oversight ($23,000), for a total of $260,000.

In addition, I should note FY 1989 saw increased demands placed on the Technology Administration to participate in broader aspects of the Department's activities with respect to defining the U.S.-Japan relationship. Although these did not entail translation services as such, this participation was viewed as being in the long-term best interests of the JTL Program and the Technology Administration itself. These issues involved matters such as the FSX, Supercomputer 301 talks, the Secretary's recent trip to the Far East, implementation of the recent U.S.-Japan Head-of-Government Science and Technology Agreement, and the current Structural Impediments Initiative announced by President Bush and Prime Minister Uno. The Program has supported these activities.

6. I understand that several senior officials from the National Institute of Standards and Technology (NIST) are now on detail at least part-time in the Office of Technology Policy. What activities are they undertaking, and how long do you expect they will be on this temporary duty?

A. The NIST detailees are an invaluable source of technological expertise and their presence here contributes significantly to the "team" spirit we are trying to create in the Technology Administration. They provide valuable technical information not easily attainable from the old OPTI resources and help policy decisionmakers to anticipate issues and respond more quickly and effectively to the Secretary, especially when a particular policy issue depends upon sophisticated understanding of a specific technology rather than the broader cross-cutting policy issues that OPTI excels at. Their presence also ensures that NIST itself, which is geographically separated from the Department, is more fully integrated in the mainstream of the Department's policymaking procedures.

The detailees have assisted us in addressing technical issues relating to digital imaging technology and its potential uses. They have also provided the technical underpinning required to formulate the Department's position on the Supercomputer 301 talks with Japan. They have provided us with important insights as we wrestle with such difficult issues as foreign access to federally supported R&D initiatives. They have also contributed specialized technical expertise and background information to senior Department officers serving on policy groups, such as the National Commission on Semiconductors and various interagency committees.

In short, they provide an extra dimension that greatly facilitates the policy formulation role.

If confirmed, I will work out appropriate arrangements with NIST's Director.

7. If confirmed, what methods and mechanisms would you use to maintain and increase communication between the Office of Technology Policy and business and labor groups? How will you seek the views of industry and labor leaders?

A. The Department is considering whether to establish a high-level technology advisory committee that would involve business, labor, the academic community, state and local governments, and other segments that play vital roles in technology issues in the United States.

Independent of that initiative, I would expect to meet regularly with such organizations as the Industrial Research Institute, the Council on Competitiveness, the National Academies of Science and Engineering, the National Governors Association, the League of Cities, professional societies, trade associations and other similar organizations. I would also expect to maintain a close working relationship with the President's Office of Science and Technology Policy, the President's new Advisory Council on Science and Technology, and the Vice President's Council on Competitiveness. These various groups will contain many of the diverse interest groups involved in technology issues.

Finally, I would work closely with other Commerce officials and offices, such as the Office of Business Liaison and the Office of the Assistant Secretary for Trade Development, to identify other possible sources of industry-related information that would be of value in formulating commercial technology policy.

8. The FY 1990 Department of Commerce (DOC) budget request submitted to Congress mentioned a "Federal Technology Policy Council," attached to the Office of the Under Secretary. What is the current status of this council?

A. At one time the Department was considering a "Federal Technology Policy Council" which would have concentrated on matters pertaining to improving the management and commercialization of federally funded or federally performed technology. Staff support would have been provided by the "Office of Commercial Affairs," which would have had responsibility for this area.

Since that time, the Department has begun to explore other organizational arrangements, as described in earlier questions. As part of that process, it was determined that if an advisory committee is to be established, it should be of broader scope, given the breadth of the technology issues facing the Nation, issues which transcend the management of the Government's own technological output.

That broader committee was described in response to the previous question. If approved, I assume it will also consider issues pertaining to federal technology management as part of its charter.

9. What do you consider to be the main problems with U.S. technological competitiveness, and what do you consider to be the major technology policy issues now facing the Administration and Congress?

A. The United States still leads the world in generating new knowledge and in creating new technology. But of late we seem to be doing less well in translating those technological breakthroughs that occur in the laboratory into world-class goods and products that can compete in the international marketplace. We want a quick and immediate return on our investments. We don't seem to be willing to take the longer view, to invest in research that will not yield returns until far in the future, to adopt modern manufacturing technologies, and most all, to improve our human resources, without whom we cannot hope to meet the technological challenges of the future.

Difficult policy choices must be made. Two policy issues seem clear. One involves the question of how and to what extent the Government should utilize its vast expenditures in R&D to contribute to the process of commercializing technology, an area that we have traditionally regarded as belonging to the private sector alone. The other, which is related, is to determine how the Government can best encourage cooperation between itself, academia, the private sector, and state and local governments to promote the goal of technology commercialization. The President's Science Adviser has stated that such arrangements hold the promise of marshaling formidable resources to achieve national goals and that he would recommend Federal encouragement if the national interest so dictated.

10. If confirmed, what will be your top priorities? That is, on which issues and initiatives will you focus your efforts? Has Secretary Mosbacher asked you to focus on specific issues?

A. If confirmed, I would hope to work with Congress to achieve three principal priorities which are interrelated and of relatively equal importance. One is to establish an effective organization in the Department which will become the focal point for considering technological issues that affect our commercial competi- tiveness. Another is to ensure that Administration policymakers regularly and routinely take into account how their proposed actions affect this Nation's technology base, just as they do with respect to the impact of their actions on foreign relations, national security, the economy, the public health, the environment, or trade. Technology cannot be an afterthought; it has to be factored into issue resolution as an important consideration right from the beginning. The third is to establish an effective outreach program to industry so that I can understand its needs, involve it in helping to set our Nation's technology agenda, and be an effective advocate for its technological interests.

Secretary Mosbacher has stated on several occasions that virtually every major issue that comes across his desk has a technology component to it, ranging from the FSX to EC 92 to his impending fact-finding mission to Hungary and Poland in a few weeks. Although my status as a consultant has limited my own involvement in these issues, the Technology Administration has been afforded regular opportunities to participate in these important deliberations and to contribute to their resolution.

11. The new DOC programs created in the 1988 Trade Act, including NIST's new technology extension activities and its Advanced Technology Program, were negotiated with and approved by the Reagan Administration. Does the Bush Administration also support them, or does it propose to reverse this earlier policy? If the new Administration is not opposed to these programs, what steps is it taking to implement them?

A. Secretary Mosbacher and Deputy Secretary Murrin have each advised the Congress that the Administration's plans with respect to these programs will be made clear in the context of the FY 1991 budget which is now pending in the Executive Office of the President. I would expect the Department to continue its dialogue with the Committee on this important issue.

12. What is the current status of the Economic Policy Council's policy reviews of (i) high-definition television (HDTV) and (ii) research, development, technology and innovation? What is your role in these policy reviews? When will the Council complete the reviews? Does the President intend to address these issues and to make recommendations to Congress?

A. I was among those in the Department who was invited to participate in the EPC Working Group's deliberations on HDTV, although as a consultant my role was necessarily a limited one. In view of the Secretary's reassessment of the Department's approach to HDTV (see Question 13), I understand that a formal report is not likely to be submitted to the Council.

The Economic Policy Council's Working Group on Research, Development, Technology and Innovation (RDTI) continues to meet informally in an effort to define the appropriate scope of its report. It is soliciting a wide range of views from the private sector. The Deputy Secretary has taken a personal interest in the RDTI initiative and brings to the deliberative process a wealth of personal knowledge and insight. I have participated in these efforts and, if confirmed, I expect to devote a considerable amount of my own time to supervising the preparation of the report, which I expect will be submitted to the Council early next year for its review and consideration.

13. Earlier this year, Secretary Mosbacher expressed great concern about HDTV and related high-definition technologies. Recently, however, he has stated that he will not single out HDTV but instead look at "a range of technologies." Please state the Department's current position on (i) whether or not high-definition technologies are important to the nation's economy and defense, and (ii) if they are important, what the Federal government should do in this area, given the large programs other governments have created to promote these technologies.

A. HDTV is a means to an end, not an end in itself. It is part of a much larger group of technologies which will drive the next stage of innovation in digitized information processing, high quality imaging and transmission media. The technologies will in turn affect a host of other industries beyond the consumer video market, such as semiconductors, computers, medical diagnostic equipment and communications. The technologies will also have various important military applications.

Focus was initially placed on HDTV in the belief that a mass-produced consumer product would help us reduce the price and learning curves for these various technologies - that is, help us obtain the economies of scale that would drive down the cost of these key technologies and provide the manufacturing experience and cash flow necessary to feed their further development.

It would appear, however, that the Department's focus on HDTV as a means of achieving these goals became enmeshed in the perception that we were trying to reestablish a TV industry in the United States. They were further complicated by public speculation that there might not be as great a market for HDTV as many had assumed. If so, it would mean that the many hoped-for benefits I described earlier would not be realized.

Under these circumstances, the Secretary reassessed the Department's focus on HDTV per se and redirected it to the underlying generic technologies that HDTV itself was intended to spur. There is much the Government can do. It should continue its traditional role of funding the basic long-term research that will support the applied, developmental work that is the primary responsibility of the private sector. It should be open-minded about reassessing policies that hinder industry-government-university cooperation in commercializing the results of such research, if the public interest so dictates. It should examine whether its antitrust laws unintentionally hinder legitimate cooperative activities by relevant firms and, if action is indicated, modify those laws.

14. Both the Secretary and some White House officials have been quoted as favoring a "generic" technology policy applying to a range of technologies. I have three questions about this position.

- **Which enabling technologies are covered by this approach? Are they the emerging technologies identified in the Department's 1987 Brown/Ambler report or some other list? Which technologies does the Administration in fact believe are most important to the future economic and military security of the nation?**
- What policy options are being considered to support U.S. leadership in these technologies?
- Are there any civilian technologies which you and the Administration consider to be essential, that is, technologies in which the United States cannot afford to fall behind Japan, Europe, or the Soviet Union? If so, what concrete steps is the Administration prepared to take to ensure continued U.S. leadership in these technologies?

A. As to the first question, the Brown/Ambler Report is an appropriate starting point for identifying the major emerging technologies, but technology changes rapidly and, although the basic findings are still valid, DOC is in the process of updating it.

From the standpoint of civilian applications, four main categories of emerging technologies are particularly relevant: Emerging materials (e.g., advanced composite materials and high-temperature superconductors); Emerging Electronic and Information Systems Technology (e.g., advanced semiconductor devices, digital imaging technology, high-performance computing, and optoelectronics); Emerging Manufacturing Technology (e.g., flexible computer-integrated manufacturing, robotics, artificial intelligence, process sensor technology); and Emerging Life Sciences Applications (especially in biotechnology).

The Technology Administration can play a major role in building a national consensus on technology priorities. I cannot commit myself to telling you today what is Number 1 and what is Number 7, but the aforementioned technologies certainly command our attention.

While our own focus will be on civilian technology, I should note that many of these are dual-use technologies that are critical to both military systems and consumer products. Accordingly, I hope, if confirmed, to be able to work closely with DOD to determine priorities with greater precision, emphasizing those that are particularly pervasive and affect other technologies, or that can be applied to a large number of different products and services. Looking again at the aforementioned technologies, it is safe to say that most experts would put advanced semiconductor devices high on any such list of priority technologies.

As to policy options, the Reagan and Bush Administrations have each taken a number of steps that I believe demonstrate long-term vision.

The Reagan Administration, for example, set in motion a string of events that I believe will, in the long-run, have a tremendous impact on our future competitiveness. Let me mention just a few of these: The 1981 Tax Act stimulated much investment in productivity-enhancing equipment; the Small Business Innovation Research Act created a successful R&D program that

Britain and other nations are emulating; the NCRA stimulated the formation of over 125 new consortia since 1984; new federal technology transfer policies and laws are in effect that should usher in a new era in federal-private sector research projects; the 1987 Competitiveness Initiative called for the establishment of multidisciplinary S&T centers at universities in partnership with industry and national laboratories, and the President's 1987 Superconductivity Initiative has resulted in a number of industry-led partnerships to commercialize high temperature superconductivity, such as the MIT-AT&T-IBM Consortium announced in June and a recent initiative involving Hewlett-Packard and the Los Alamos National Laboratory.

The Bush Administration is also looking for ways to encourage industry to make necessary long-term investments in R&D and to commercialize the results. It has endorsed a restructuring of the R&E tax credit and making it permanent. It is exploring whether to seek amendment of the National Cooperative Research Act of 1984 to apply it to joint manufacturing. It is encouraging agencies and industry to enter into more cooperative arrangements under the auspices of the Federal Technology Transfer Act of 1986. A number of Cabinet studies are under way that may identify additional possibilities.

15. The General Accounting Office (GAO) recently released a report which finds that the research and development (R&D) tax credit has generated far less new private research spending than it has lost in tax revenue. Do you and the Administration agree or disagree with GAO's numbers? If the numbers are correct, what justification is there for continuing the R&D tax credit? And what are the implications of the GAO report for the argument that Federal technology policy will be most efficient if it relies on indirect incentives, such as the tax credit, rather than direct cooperation between industry and government?

A. I understand that the General Accounting Office report was premised on the assumption that many firms would have continued to do some R&D even in the absence of the credit, thus calling into question the credit's efficiency as a generator of new research spending. I am not in a position to debate numbers, but I would certainly not quarrel with the principle that at least some spending covered by the credit would have occurred anyway. That is a fact of life in tax policy.

However, the more important point is that the credit's usefulness was compromised by the way it was structured, by its inapplicability to start-up firms or to firms entering new lines of business, and by its lack of permanence. The Administration is seeking to remedy these deficiencies. I understand further that a 1986 Brookings Institution report concluded that had the credit been permanent, it would have generated a substantial increase in real GNP and additional tax revenues.

16. What are your views regarding the Sematech project? Do you believe that this industry-government consortium is working successfully and that it will help improve the manufacturing capabilities of the U.S. semiconductor industry? If it is working successfully, is it therefore a model for improving the technological capabilities of other U.S. industries?

A. Government-industry partnerships could have substantial benefits and I have noted earlier that the President's Science Adviser said he would endorse them when the public interest so dictated. Federal support for Sematech was predicated largely on the importance of semiconductor manufacturing technology to the Nation's national security and industrial base. The public interest test was clearly met. But whether Sematech can be a model for other consortia is less clear.

First, it is too soon to tell whether it will succeed in its goal of developing new process technologies and transferring them to its members. Sematech is only in the second year of its five year plan.

Second, Sematech's own advisory committee cautioned that the conditions that encouraged cooperation with respect to semiconductor manufacturing might not be the same in other industries. In this case, there was consensus among the largest firms in the industry as to the nature of the problem and the goals of the consortium. The research was far enough removed from the theoretical end of the research spectrum to have practical application, but not so close to the market end as to discourage cooperation among potential competitors.

Third, and this goes to the heart of the question, I do not believe we yet have a clear national consensus on the efficacy or propriety of federal support for consortia such as Sematech where the implications for national security are less clear. At the same time, I believe that more people are coming to recognize that our national security depends heavily on our overall economic security and that university-government-industry partnerships can be appropriate mechanisms for marshaling technical expertise, pooling resources and sharing risks and costs associated with developing significant next generation technologies. These are issues that will require much analysis and discussion within the Executive branch and between our respective branches.

17. In the past, OPTI was very active in attempts to persuade industry to adopt and use advanced manufacturing technology. In your view, does manufacturing remain a problem area in American industry? If confirmed, will you continue the efforts of the previous Administration to identify barriers to the use of advanced manufacturing technology and to serve as a catalyst for new efforts to utilize this technology?

A. Yes to both questions, and unequivocally so. The reasons for our manufacturing decline are varied and complex, but I think most experts would agree on a few key points.

Back in the 1950's, a certain complacency overtook U.S. industry, given its preeminent place in the world economy, and U.S. manufacturers emphasized quantity almost to the neglect of quality. CEOs were rarely chosen from the manufacturing side. Even as other nations began building powerful new industrial infrastructures and developing process technologies, old attitudes prevailed. Things are changing, but even today some of this complacency exists. Senior managers in some firms continue to look at markets from a national, rather than an international, perspective. They continue to be satisfied with products that are "good enough" rather than on products that are world class. They have not been quick to adopt the principles of concurrent engineering that allow for better integration of product design, manufacturing and marketing operations.

Accordingly, the catalytic role described in the question is one of the Assistant Secretary's most important responsibilities. OPTI deserves a great deal of credit for its pioneering role in developing and popularizing the

Flexible Computer Integrated Manufacturing concept which has led to the creation of the National Coalition for Flexible Automated Manufacturing (NACFAM), the establishment of two shared centers, and the development of plans for at least fourteen more. However, it seems clear that we will have to focus on the business factors - such as availability and cost of capital, accounting practices, procurement regulations, et al. - which affect a company's decision to adopt advanced manufacturing technology.

18. The Commerce Department has played a major role in encouraging the transfer of unclassified technology from Federal laboratories to the private sector. In your view, what should be the Department's role now in this area? Are you satisfied with the pace of technology transfer from Federal laboratories? Do you have any policy proposals in this area?

A. The Department should remain in the forefront of our efforts to promote the transfer and commercialization of federally funded research.

It is very important that these people continue in their monitoring, educative, coordinative and advocacy roles. For many managers, technology transfer is a new concept. Even those who are enthusiastic often lack the requisite technical skills. In addition, we have to get the word out to industry that the federal laboratory infrastructure can be a powerful ally in the quest for technological advancement.

Substantial progress has been made but we can do even more. It is a positive sign that the number of cooperative R&D agreements under the Federal Technology Transfer Act doubled (from 100 to 200) during the first nine months of CY 1989 and that the pace has accelerated as agencies have implemented and refined the necessary administrative arrangements for exercising their new authorities. The real test at this stage is the extent to which we can show that the walls that have traditionally separated federal labs from the private sector are coming down.

There are a number of things that can be done to improve federal technology transfer programs. There is general consensus among federal technology managers that we need to remove some of the barriers to the commercialization of valuable, federally-produced software, such as the inability of federal employees to obtain copyright protection. We also have to deal with private sector concerns that valuable information will be disclosed to their competitors as a result of the Freedom of Information Act. If confirmed, I hope to work with Congress in exploring possible solutions.

19. During your tenure at the Office of Science and Technology Policy (OSTP), you played an active role in negotiating the new U.S.-Japan agreement on science and technoiogy. Now that the agreement is in force, what specific joint research projects do you believe should be undertaken with Japan, and what access should the U.S. ask from Japan in return for continued Japanese access to taxpayer-supported research in our country? What do they have that would be valuable and for which it is appropriate to ask?

A. As provided by the Agreement itself, the United States and Japan will set about defining mutually agreeable research activities in a number of priority areas, such as advanced materials, biotechnology, advanced manufacturing, information sciences and global environmental areas.

This process is well underway. The President's Science Advisor will be hosting the annual meeting of the U.S.-Japan High Level Committee next March at which bilateral decisions will be made on a number of joint initiatives. Japanese expertise in manufacturing and process technology as well as in semiconductors (DRAMS), gallium arsenide, x-ray lithography and digital imaging make these areas worthy of special attention. In preparing for the High Level Committee, the Department of Commerce will work with private sector industry groups to obtain their views and recommendations on what specific projects should be pursued under the agreement.

It is entirely appropriate for the U.S. Government agencies to ask their Japanese counterparts to facilitate the placement of U.S. researchers into national Japanese research programs, including those performed by or in concert with the private sector. Much of the important government-funded or sponsored work undertaken in Japan occurs in private industrial facilities rather than government laboratories or open universities. We should strive to obtain access to these facilities and the Japanese national research programs that the new agreement facilitates. I believe that if Japan, or any other country for that matter, consistently denies and or places impediments for U.S. scientists and engineers to participate in government-supported or sponsored research, wherever undertaken, then it may be appropriate to reexamine some of our own policies and assumptions regarding foreign access to and participation in our taxpayer-financed research activities at U.S. universities and national laboratories.

However, our policies of openness have served us well, and foreign participation is often necessary to the success of our own research efforts. I cannot give categorical answers to an issue of such complexity, but I do agree that this is a policy issue that will have to receive attention. Moreover, it will be an issue of increasing importance as the European Economic Community achieves full integration in 1992 and individual countries focus their R&D efforts and resources in EC Programs in pre-competitive, enabling technologies and restrict, or limit, the role of non-EC members.

20. If confirmed, what activities would you propose to take pursuant to the Metric Conversion Act of 1975?

A. The Omnibus Trade and Competitiveness Act of 1988 declared the metric system of weights and measures to be the preferred system in commerce and called upon agencies to implement it in their own activities by FY 1992. We are working very closely with agencies to help them meet this requirement and have reactivated the Metric Operating Committee. Agency reaction has been very positive so far. In addition, we will work very closely with private industry and trade associations to help increase public awareness of the importance of metrication. The EC 92 initiative is heightening public sensitivity to its importance and is helping to increase private sector receptivity to our message.

Senator GORE. With that, let me again welcome you and invite you to proceed with your statement.

STATEMENT OF DEBORAH WINCE-SMITH

Ms. WINCE-SMITH. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am honored to appear before the subcommittee as President Bush's nominee to be Assistant Secretary of Commerce for Technology Policy. I have spent the past 13 years in federal service, engaged in science and technology policy matters and managing federal research programs.

Those years have afforded me a great deal of hands-on experience in identifying and recommending courses of action to improve our scientific and technological foundations at home and abroad. They have given me the opportunity to work with highly talented people in all sectors of our nation's R&D enterprise, from bench scientists and industry leaders to presidential science advisors.

They have taught me how to be an effective part of the Federal Government's policy making process. I have established long-standing relationships with the R&D communities and senior governmental officials in Europe, the Pacific Rim and many developing countries, experience and associations that are increasingly important, as virtually all science and technology matters today are global in scope and significance.

My first years were spent at the National Science Foundation managing bilateral research activities between American scientists and their counterparts in Eastern Europe. Most recently I have served as an assistant director in the Office of Science and Technology Policy and, as such, had the opportunity to help shape President Reagan's 1987 Competitiveness Initiative and his ensuing Executive Order facilitating access to science and technology.

Those initiatives involve the development of important new policies on technology transfer; on forging cooperative partnerships between universities, national laboratories and industry, and basic and emerging technologies, such as superconductivity; and on negotiating more balanced, bilateral and multilateral science and technology agreements aimed at obtaining equity of opportunity and protection of intellectual property rights for the United States.

Many of the key concepts of this executive order have subsequently been enacted into law in the 1988 Omnibus Trade and Competitiveness Act.

Mr. Chairman, the United States faces very real technology challenges now and in the years ahead. We have seen what Japan can and is doing, and we expect the impending unification of the European Economic Communities in 1992 to usher in a new era of technological cooperation among the European nations that will make them even more formidable competitors in the international marketplace.

However, I believe that the greatest challenge we face is from ourselves. For decades we have prided ourselves as the scientific and technological drivers of the world. We were particularly confident of our ability to innovate and to convert new discoveries into the goods and services that have transformed the way we think and live and that have vastly improved the quality of our lives.

But other countries have also made impressive technological strides, and we are feeling the economic impact of intense global competition in the very technology-intensive industries we created.

For example, we who invented the semiconductor now find ourselves in a race for our semiconductor lives. Intense global competition also holds true for machine tools, supercomputers and perhaps superconductivity.

We should respect the accomplishments of our foreign competitors and make more concerted efforts to learn from their successes, including the advantages of cooperation, the willingness to take risks, to pool resources, to make long-term investments in the next generation of technology, and to emphasize manufacturing and quality as fundamental prerequisites of doing business.

Mr. Chairman, the assistant secretary's principal job is to establish a clear role for government in maximizing the contribution of technology to our country's competitiveness and economic security. All of us in government, academia and private business have roles to play in assuring that America's technological excellence underpins our Nation's commercial strengths.

We have to do a better job in gaining commercial advantage from our considerable national investment in R&D. We need to work closely with our private firms to encourage them to transfer new knowledge and applications from the laboratory to the marketplace, to adopt advanced manufacturing techniques and principles of concurrent engineering, to look to the universities and federal laboratories as partners in the quest for technology leadership, and to emphasize quality in everything they do.

We in the government need to remove the potential economic, legal and regulatory barriers that may be crippling American firms and inhibiting their ability to make long-term investments in the promising new technologies that will propel tomorrow's products into the global trading system.

If confirmed, Mr. Chairman, I will work hard to realize these goals. I will strive to make the Office of the Assistant Secretary for Technology Policy a strong and effective voice for promoting the nation's commercial technology interest. I will reach out to industry to involve it more closely in setting the nation's technology agenda, and focusing attention on technology commercialization.

I firmly believe that we as a nation cannot afford to be surpassed on the scientific and technological cutting edge as we head into the 21st century, nor assume second place in the race to convert the technology accomplishments of our talented people into world-class commercial successes.

And finally, Mr. Chairman, if my nomination is favorably reported and I am confirmed by the Senate, I will look forward to working with the distinguished members of this committee and other members of Congress on the technology challenges that we must face as we head into the next century.

Thank you. And I would now be pleased to answer any questions that you may have.

Senator GORE. Very good. Thank you. I welcome that statement.

Let me start by asking you about your views on some aspects of national technology policy. Here is some of what I believe American companies are up against.

While the U.S. Government spends 0.2 percent of its R&D budget to promote industrial development, West Germany spends 15.3 percent. Over the next six years, European governments and companies will spend $16 billion on joint projects to develop new technologies. The Japanese government is, of course, investing heavily in new technologies, as well. Japan also heavily subsidizes the cost of building new factories. And both Japan and Europe protect their home markets to a far greater degree than do we.

If our government continues its present laissez faire policies, do you honestly believe that the United States will have much high technology strength left in 20 years? How can American firms compete with a deck that is stacked as the current one is?

Ms. WINCE-SMITH. Thank you, Senator Gore.

Clearly, you have raised one of the most fundamental questions that is facing the country today, and one that is a challenge to this Administration and the Congress.

I believe very strongly that we have made progress during the last eight years under President Reagan's leadership in addressing some of these problems and, for the first time, are beginning to develop a package of new strategies that will assist and help our private sector as they face the challenges of global, economic competition.

I referred to some of these things in my statement, but I would like to emphasize the concept of partnership.

I believe we really have to work with our industry, our national labs and academia in a concerted effort in these enabling new technologies that you have referred to. And, of course, at a certain point we have to turn development activities over to industry.

But up until the point that we are moving into strict commercialization, I think the government has a very strong role to play and is doing that.

Senator GORE. It is doing it, did you say?

Ms. WINCE-SMITH. I could give you a few specific examples.

I think that as a result of the engineering research centers that have been established, the science and technology centers at our universities, the new superconductivity consortia that are getting under way, and Sematech, we are seeing a cultural change in how we have approached technology commercialization.

Senator GORE. The levels of money devoted to it in the United States do not approach what our competitors are doing, or am I mistaken about that?

Ms. WINCE-SMITH. No, that is indeed correct.

One of the issues that I think is a challenge for the Department of Commerce, as well as the broader administration, is to work with other agencies and departments to see how we can get better commercial advantage out of our $60 billion-plus federal investment in R&D.

In the past I think that much of this sum was spent without thinking of the linkages to trade and competitiveness.

Senator GORE. Well, I think unless we see some dramatic changes over and above and far beyond what is now being implemented, we are going to lose badly. I hope we can turn it around, and I hope that the current administration will work in that direction.

In May, a Department of Defense study concluded that Japan is now significantly ahead of the United States in six key technologies: microelectronic circuits, the preparation of gallium arsenide semiconductors, robotics, optics, superconductivity, and biotechnology materials and processing.

All of these have defense as well as commercial applications. Do you agree with these findings of the Department of Defense?

Ms. WINCE-SMITH. I have had the opportunity to look at that report and it has also been examined quite closely in the Department of Commerce. And I would agree with you that in many of these areas, the Japanese have formidable strengths. I cannot say if in every area they are indeed significantly ahead, but I agree with its basic premises.

Senator GORE. The Bush Administration's overall views on technology, starting with the Defense Department, are of interest and concern. Several years ago Congress and the last administration were shocked when Toshiba and a Norwegian company gave the Soviet Union the technology it needed to make extremely silent submarines. We saw there the risks of letting our technology fall behind foreign developments.

Now, however, press reports say that the Bush Defense Department wants to kill funding for the Sematech research project, wants to neuter DARPA, wants to rely on the Japanese for HDTV technology and computer chips.

To me, this sounds like a proposal to abandon key U.S. research efforts and, in effect, putting Toshiba in charge of U.S. defense technology in key areas. I know that you have to represent the administration today, warts and all, but can you explain the rationale behind such proposals? Why would DOD want to rely on foreign companies for such technologies?

Before you answer—hold your answer, because we have been joined by our distinguished and respected colleague from Louisiana, Senator Bennett Johnston, and I will revisit the question I just posed after we hear from Senator Johnston.

STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

Senator JOHNSTON. Thank you very much, Mr. Chairman.

And my apologies, especially to Ms. Wince-Smith for being late; I was at another meeting.

Mr. Chairman, it is with a great deal of personal pleasure that I introduce my next door neighbor to you, Ms. Wince-Smith. And I can recommend her very, very strongly, first of all, from the objective point of view.

She has a record that is absolutely laden with accolades, from graduating Magna Cum Laude, Phi Beta Kappa at Vassar; master's degree or the equivalent thereof at Cambridge in the UK; National Science Foundation; the White House, accolades from the White House; and now consulting for the Department of Commerce.

We have encouraged the administration to appoint people of quality, of experience, of demonstrated ability, and Ms. Wince-Smith is such a person. And so, objectively, I can tell you that I am proud of the appointment. But personally, I can strongly recommend Ms. Wince-Smith, along with her husband, Ambassador Mike Smith; they could not be finer neighbors.

So, both professionally and personally, I just want to tell you we have a great nominee here, and please, please, get her out of here, and I mean successfully. Do not turn her down.

Can you imagine how I would feel if my next door neighbor does not make it through this committee, Mr. Chairman? And I know she will.

Senator GORE. Thank you, Senator Johnston. That recommendation is awfully influential with this particular subcommittee chairman.

Senator JOHNSTON. Thank you, Mr. Chairman.

Ms. WINCE-SMITH. Thank you.

Senator GORE. I appreciate your introduction and commendation. Thank you.

Senator JOHNSTON. Thanks.

Senator GORE. Ms. Wince-Smith, just to recap the question very briefly. The administration has, according to press reports, expressed support for killing funding for the Sematech defense project, cutting way back on DARPA's effectiveness, and relying on the Japanese for HDTV technology and computer chips.

That is an alarming pattern, is it not? Are we seeing a pattern? And if so, is that not cause for concern?

Ms. WINCE-SMITH. Mr. Chairman, I have heard the same rumors that you are referring to about the possibility of DOD in some way reducing or withdrawing their very strong support for Sematech as well as the very strong support they have always indicated for DARPA.

I cannot comment on the specifics of that, because at this point they are indeed rumors.

I will say, however, that the issues you have raised about foreign dependency and its impact on our national security base are very, very serious issues. And, as you probably know, any day now we will be receiving a report from the National Advisory Commission on Semiconductors that I think will be addressing some of these issues.

If I am confirmed, I expect to participate in the process through which the Administration will deal with these issues. But you have indeed raised a very serious concern, and I will carry it back to the Department.

Senator GORE. Thank you.

If DOD terminates its funding for Sematech, would that involve a transfer of federal funding for this effort to the Commerce Department? What would happen if the funding for Sematech was eliminated?

Ms. WINCE-SMITH. I cannot answer the specifics of that since, at this point, this is indeed a rumor and does not have confirmation. I would indeed expect that if DOD decided not to participate in Sematech that there would be discussion in the Administration on alternative means of pursuing its objectives.

And again, if I am confirmed, I would expect to participate in those deliberations.

Senator GORE. Moving from the Defense Department to civilian technology. As we both know, Secretary Mosbacher had the audacity to say that the United States should not ignore whole technical fields like high definition television, and he was then muzzled and constrained from expressing the very sensible views which he had previously stated.

If the earlier press reports I mentioned are accurate, and the administration wants to terminate all DARPA research leading to civilian spinoffs, and if the White House wants no civilian programs like Sematech, to match the huge technology development projects of Japan and Europe, and no programs like the one that Secretary Mosbacher was encouraging before he was silenced, then are we to assume that the administration is abandoning efforts to maintain U.S. leadership in technology and industry?

That is kind of a loaded question, and I do not know how you will dodge it, but I want to ask it anyway.

Ms. WINCE-SMITH. Thank you.

It is indeed a very loaded, but important question. I think at this point you are completely correct. There is a debate inside the administration on what is the appropriate role of the government in terms of direct support to specific technologies that may have a direct impact on specific industries.

I think that there is discussion and work underway on how to address this issue in a way that focuses on highly flexible, multidisciplinary technologies that have a broad impact on a range of industries and that are not industry specific.

And that is something, as I said, that is underway. If I am confirmed, I again expect to participate in that process.

But allow me to address HDTV because I know that is what you are referring to with regard to Secretary Mosbacher. In that case, I think the debate was complicated by looking at the issue in terms of a consumer end-product, as opposed to an underlying group of technologies that will have profound impact on our telecommunications and information infrastructure.

Senator GORE. Let me ask you about the computer network proposal. Senator Pressler and I, and several of our other colleagues, have proposed building a backbone fiber optic network, what I like to call information superhighways.

The White House Science Office, where you worked earlier, joined in that effort with a very sound plan, initiated by the Supercomputer Network Study Act, which this subcommittee reported out several years ago.

But the plan from the White House Science Office contains a large disclaimer, to the effect that OMB has not endorsed the plan or its budget. Do you see any serious commitment on the part of OMB and the President to implement this plan?

Ms. WINCE-SMITH. I have not been involved in any deliberations with OSTP or OMB on this particular issue, given my current status. I believe that in his testimony before this committee, Dr. Allan Bromley certainly endorsed his strong support for the principles in the act. And I think right now these issues are being dealt with in the context of the 1991 budget deliberations.

Senator **Gore**. But you do not know what OMB and the President feel about this?

Ms. **Wince-Smith**. Not in terms of specific resource allocations. In terms of its importance and its need for the country, it is my understanding that there is indeed tremendous support for this important initiative.

Senator **Gore**. Well, yes, they are supportive rhetorically, but whether they will be supportive to the point of actually supporting it with money, remains to be seen.

Now let me ask you about unfilled positions. We are dealing with one unfilled position here today, but it has been an entire year since President Bush was elected, and yet the Department of Commerce still has a whole series of major science and technology posts, and other agencies do as well, that are unfilled.

Should we take this as a sign that the President is placing a low priority on this subject of science and technology? We do not have a new director for the National Institute of Standards and Technology, and a whole series of major science and technology posts are completely vacant. What does this mean?

Ms. **Wince-Smith**. Mr. Chairman, let me first assure you that, inside the Department of Commerce, I believe everyone is very frustrated with this state of events that you outline.

I know Secretary Mosbacher and Deputy Secretary Murrin have devoted major effort and attention to recruiting a highly qualified industrial leader to serve in the administration in this newly created position of under secretary.

They have made some progress on this, and one of the problems I believe that the administration is indeed wrestling with is how to attract individuals of high caliber to come into government, given the very major personal sacrifices that they have to undertake. And I think during Deputy Secretary Murrin's confirmation hearing, some of those sacrifices were discussed.

But, in terms of their commitment, they are moving full speed ahead and are devoted to this effort.

Senator **Gore**. Well, full speed ahead is a generous description of a process which has seen one year pass by and no name has been sent to the Congress for the position of Under Secretary for Technology, or for the position of Director for the National Institute of Standards and Technology, or for a variety of other positions in other agencies dealing with science and technology.

It is hard not to conclude that they do not assign a very high priority to it, in spite of the fact that science and technology will determine, to a large extent, our nation's economic and competitive position in the world of the future.

Do you have any estimate on when the President may announce choices for the Under Secretary for Technology and the Director for the National Institute of Standards and Technology?

Ms. **Wince-Smith**. I cannot comment on any time schedule.

Senator **Gore**. I understand.

Now, just a couple of other questions, and then I will recognize Senator Pressler.

In the last administration you helped negotiate the new U.S.-Japan Science and Technology Agreement. This morning I chaired a hearing on the human genome project. And one issue there is the U.S.-Japan relationship.

According to an article in the latest issue of "Science," Japan is spending only about $8 million on human genome research, while the United States is spending about $90 million.

Dr. James Watson and others have expressed concerns that the U.S. will pay for the basic research sequencing the human genome and the Japanese and others will then take the data and make a great deal of money developing pharmaceuticals and other products.

The magazine article quotes Dr. Watson as accusing the Japanese of freeloading, and suggesting that the U.S. might not share sequencing data with countries that do not pay their fair share of research costs.

Do you agree with Dr. Watson? Should the Japanese be doing more?

Ms. WINCE-SMITH. Mr. Chairman, you have raised, in the context of the human genome, the much broader policy issue of, what should be our relationship with the Japanese in the whole area of science and technology? There is no question that the Japanese have benefited tremendously from their access and participation in our unsurpassed basic research establishment in this country.

And the Agreement to which you refer, which was signed by President Reagan last year, is intended to begin a long-term process to try to redress very significant imbalances in that relationship.

In regard to the specifics of the human genome project, it is my personal belief that any large-scale effort like that should be shared among the advanced industrial countries in a way that the parties would get equitable benefits based on make equitable contributions.

To give you another example, the government of Japan and other countries are very interested in participating in the superconducting supercollider. And I think in a case like that, we would also want to assure that there is a very fair, balanced division of labor, sharing of risks, and of equitable contribution, so that one of the potential partners does not come in and target a specific exciting area of research, with the United States bearing the broad cost of the whole operation.

So, in balance, I would tend to agree with what that article states.

Senator GORE. Let me ask you another question. As you know, a number of people who worked in the Commerce Department during the Reagan Administration have gone to work for foreign interests, including major foreign companies. Do you believe it is appropriate for people who have had high access to U.S. policymaking to take jobs representing foreign companies?

Ms. WINCE-SMITH. I do not know the specifics of individuals to which you refer. Clearly, I think individuals who have had high positions in the government always will need to be very careful and considerate as to how they approach such relationships.

My personal belief is that they should act very judiciously in approaching their colleagues and current officials, in any administration, on the behalf of foreign companies.

Senator **Gore**. Do you plan to institute any policy regarding that matter for the people who work under you, if you are confirmed?

Ms. **Wince-Smith**. That is something that I have not thought about.

Senator **Gore**. If you would like to supplement your response for the record, we will look forward to getting that response.

[The following information was subsequently received for the record:]

I firmly believe in the principle that all federal employees, regardless of their level, must avoid both the reality as well as the appearance of any impropriety. If laws or regulations are not up to the job of providing the public with this fundamental protection, they should be changed, modified or supplemented.

At the same time, I also recognize that restrictions, if unreasonably related to the harm to be avoided, can make it very difficult for the Government to attract the kind of people it needs to get the job done and can send an unintended message to the public that perhaps these officials cannot really be trusted.

Accordingly, the answer to the question of whether we need additional restrictions of the sort described depends principally upon the harm that we are seeking to avoid.

Current law clearly curtails the ability of former officials to take undue advantage of information they obtained or relationships they formed while working for the Government. Time limitations are placed on their ability to represent clients on particular matters before any agency as well as on their ability to attempt to influence their former agency.

In addition, President Bush, who has made it clear the "(p)ublic service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain," has issued a strong Executive order making ethical conduct a top priority and has also proposed a number of significant legislative changes. Moreover, the Commerce Department itself has issued regulations authorizing it to make those who violate post-employment laws personae no gratae as far as official Department business is concerned.

Thus, to the extent that the concern relates to the possible misues of information or exertion of undue influence over former colleagues and subordinates, I incline to the view that the current legal/administrative mechanisms, together with the President's proposals, are generally equal to the task without taking the drastic step of prohibiting former high level officials from serving a specified category of clients.

A second class of problem is the possibility that high level federal S&T officials will misuse their positions of trust to develop or advocate policies aimed at attracting potential clients rather than advancing the public interest. I have worked with federal S&T policymakers throughout my career and their dedication and devotion to duty is their hallmark. If this is the danger to be avoided, I would make three observations. One is that these will be rare cases. Another is that conflict-of-interest laws are designed to deal with precisely that sort of issue. The third is that the possibility of misusing a policy position to benefit a potential employer or client can arise in many agencies, in many subjects areas, and can involve many classes of potential employer. I would be reluctant to single out foreign entities as a special class.

In my view, the real problem is neither of these. Rather, it is the problem, that was best summed up in the article "U.S. Experts on Japanese Often Have Economic Ties" that appeared in the *Washington Post* on the day following the hearing of my confirmation: Many well-known figures in law firms, academia, think tanks, business, lobbying firms, et al., who are in positions to influence public debate on highly-charged issues, such as the direction of the U.S.-Japan relationship, are becoming increasingly dependent for financial support on foreign clients likely to have a stake in the outcome of the debate. Moreover, they are often contributing to the public dialogue without revealing their ties to the foreign stakeholders.

I do not believe we can get at this kind of problem by the simple expedient of barring former Government officials from taking on foreign clients. Former officials will always look for clients/employers from among those who seek to benefit from their expertise. That is not inappropriate as a matter of principle. I have some real reservations about singling out foreign entities as a "wrong" class of employer. Moreover, the experts involved who can influence public debate are not confined to former Government officials.

Rather, I believe the best way to approach this kind of problem is to concentrate on ways of ensuring that the public, the Congress, and federal officials themselves have the information they need to assess the objectivity of the advice that they are given from these sources.

Accordingly, for the reasons indicated above, I tend to view a restriction on the ability of former officials to serve a foreign client as excessive, based on the information currently available to me. I would not hesitate to alter my views if circumstances warrated. I assure the Committee that, if confirmed, I will make every effort to ensure that my employees are aware of their legal and ethical obligations and I will work very closely with the Department's General Counsel to ensure that the rules are rigorously enforced and that any discovered loopholes are promptly plugged.

For the sake of completeness, I should also add that I haved been advised that I would not have the authority to adopt special rules for former employees of the Assistant Secretary's office, absent statutory authority.

Senator **Gore**. I have gone over my time. Let me recognize Senator Pressler.

Senator **Pressler**. Thank you, Mr. Chairman, and I welcome the nominee.

Let me ask a few questions, just to bring myself up to speed. You may have covered some of these, and I have read your opening statements and your response to the written questions.

Many years ago when I was in the Army, for a time I was attached to something we called ARPA, Advanced Research Projects Agency, which I think has become DARPA. Is that true? And what is the relationship of your office to the Defense offices, such as that?

Ms. **Wince-Smith**. Thank you, Senator.

The Office of Technology Policy and the whole technology administration in the Department of Commerce, including the National Institute of Standards and Technology and the National Technical Information Service, have had a very longstanding, close relationship with DARPA. And I foresee that continuing, and indeed, accelerating in the future.

DARPA, of course, is responsible for working with all sectors of the R&D enterprise and industry on military technology development, technology that will directly impact our military base. The Department of Commerce's responsibility is related to commercial activities. And there is an obvious bridge there.

Senator **Pressler**. If you were to reorganize our Federal Government, and if you had a free hand in scientific research, would you combine some of these offices, or would you leave them the way they are?

Ms. **Wince-Smith**. Well, that is something that, even if I am confirmed, I do not think I will have any control over. But the question you have raised is an important one, and it is one that has generated a lot of discussion and articles and debate for many years.

I personally believe that we have benefited tremendously from the decentralized system we have of R&D funding in the United States. And I would be concerned if we moved towards a monolithic type of entity.

Senator **Pressler**. Do the Japanese have a monolithic type of entity?

Ms. **Wince-Smith**. Actually they do not. I think that is one of the myths we have about how the Japanese are organized, in terms of R&D.

I know, for instance, during the course of the very long and difficult negotiations with the U.S. Science and Technology Agreement with Japan, one of the things the American delegation was surprised and amused by was the tremendous bickering and fighting among the various entities of the Japanese government.

They certainly have their own prerogatives and their own mission, and they do not often cooperate closely.

Senator PRESSLER. I see. That is interesting. I did not know that. If that has been written up, I would be very interested in reading about it because we always assume that Japan has its act together.

Speaking of Japan and new technology, it said that we are drifting towards becoming a service economy and that the competitive edge is going to other countries and so forth. Is this true? Are we drifting towards becoming a service economy because we don't have enough new technology, for a number of reasons, training in our schools, our attitude, what we pay people?

The way to make money is to be an investment banker or a lawyer, and the way not to make much money is to get a Ph.D. in math or to serve in a research capacity, to be a physicist, and stay in research where there is very little advancement.

I mean you would make a good living, but you are not rewarded by our society as much as if you became a lawyer or an investment banker.

Is that true? And what can we do about it?

Ms. WINCE-SMITH. To answer the first part of your question, Senator, we are not at this point, nor are we drifting toward becoming a service economy.

Again, there has been a lot of literature that implies that the United States is becoming a country of McDonald's and Mrs. Field's Cookies. The fact of the matter is, we still have a very strong and vibrant manufacturing base.

As I noted in my statement, we have problems in the manufacturing area, and one of our highest priorities is to address those. We need to work very hard to bring the practices of advanced manufacturing into our private sector and to promote the adoption of concurrent engineering.

Our National Institute of Standards and Technology and the Technology Administration have as one of their highest priorities to work on manufacturing and improving our capability. That is at the heart of the Sematech project, to improve our manufacturing ability in semiconductors.

So it is an area that we have to devote tremendous effort to in the coming years.

As far as the issue of the role models and types of careers that our young people go into, I believe very strongly that this is an area where we need strong, bipartisan, Congressional/Executive Branch leadership to develop initiatives to encourage our young people to look to science and engineering as a future employment opportunity.

And if we are not successful in that, we are indeed going to face very serious problems in the next century.

Senator PRESSLER. How much does your office use consultants? Do you contract out a lot of the research?

Ms. **Wince-Smith**. No. The Office of Technology Policy has not relied heavily on consultants. It is my understanding that there is one individual there now who is on a consultant arrangement, under the Japanese Technical Literature Act.

Senator **Pressler**. Well, I thank you very much.

Ms. **Wince-Smith**. Thank you, Senator.

Thank you, Mr. Chairman.

Senator **Gore**. Are you familiar with the Japanese Technical Literature Act of 1986?

Ms. **Wince-Smith**. Yes, Mr. Chairman, I am familiar with it.

Senator **Gore**. How do you think that is being implemented?

Ms. **Wince-Smith**. First let me mention that in my previous position at OSTP, my colleagues and I were very, very strong supporters of the Japanese Technical Literature Act and were very pleased at its passage.

I believe that the Japanese Technical Literature Program is proceeding quite well. The Department of Commerce has a very outstanding program manager who runs that, as well as a very fine detailee from the National Technical Information Service, and a consultant.

During the past year, this program has made some significant strides in translating a number of key pieces of technical literature.

The Department of Commerce's Deputy Secretary is very interested in this program. He just held an interagency meeting, I understand, to look at it. And it is my understanding that the area of outreach, of getting this information out to our industry, is really the key priority that the Department needs to focus on in the coming years to ensure that when these translations are completed, that they get out to the people who need to use them.

If I am confirmed, to work on that activity will be one of my highest priorities.

Senator **Gore**. Well, I know that Senator Rockefeller, who is the father of that program, would like to see a lot more progress there, partly in the private sector, because I am not sure there has been an adequate level of interest among the companies that could make better use of it.

The new Clearinghouse on State and Local Initiatives on Productivity Technology and Innovation was set up by the Omnibus Trade and Competitiveness Act last year. And the clearinghouse has a big job tracking state programs on a small budget.

What priorities will you set for this unit?

Ms. **Wince-Smith**. It is my understanding that the Clearinghouse Program just recently received the report that was prepared by the Advisory Commission on Intergovernmental Relations that had been retained to look at the program and to make some recommendations on how it should proceed.

And if I am confirmed, one of my first priorities will be to study that report carefully and work within the Department of Commerce and other parts of the administration to implement appropriate recommendations.

I might mention, in this context, that the National Institute of Standards and Technology has a longstanding relationship with state and local governments, in terms of getting out and making available federal research results.

And if I am confirmed, I would want to work closely with the National Institute of Standards and Technology to ensure that we have a very coherent program to maximize our resources in that area.

Senator GORE. What about metric conversion? What is your view of that?

Ms. WINCE-SMITH. Mr. Chairman, as you know, the Omnibus Trade and Competitiveness Act has required federal agencies to convert to metric in their operations by 1992. This is an activity I understand that is well underway in the Department of Commerce. Secretary Mosbacher is strongly committed to metric conversion.

And our Deputy Under Secretary for Technology, Mr. Lee Mercer, who is in the audience today, just recently chaired a very high level interagency meeting to begin the process of ensuring compliance with the Trade Act.

Senator GORE. What about the earlier act of 1975, directing the secretary to encourage voluntary metric conversion in the private sector? Have you got any plans to implement that?

Ms. WINCE-SMITH. In the Department of Commerce, there is a fully staffed metric office, and they have been working to fulfill the requirements in the 1975 law. And again, if I am confirmed, one of my priorities will be to take advantage of the tremendous resources and expertise that exists out at NIST, to work on this problem, which is of course, at its heart, a standards/measurement issue.

Senator GORE. I have no other questions at this point. I wish you well, and I appreciate you coming here today.

Thank you.

Ms. WINCE-SMITH. Thank you, Mr. Chairman.

[Whereupon, at 2:50 p.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

POSTHEARING QUESTIONS FROM SENATOR GORE TO MS. WINCE-SMITH

Q: Working for foreign interests. As we discussed at the hearing, please state whether you will ask the political appointees working under you to make a commitment not to work for foreign interests when they leave the Department. Please also state whether Secretary Mosbacher has a Department-wide policy on this matter.

A: At your invitation, I have already provided the Committee with a more detailed explanation of my position on the question of subsequent employment with foreign interests. A copy of my insert for the record is attached.

Q: Japanese Technical Literature. I have three follow-up questions regarding the Japanese Technical Literature Program.

(a) First, the fiscal year (FY) 1989 budget request for the Program was $425,000, and Congress provided this amount. However, your answer to prehearing question number 5 stated that during FY 1989 the Program spent a total of $260,000. How was the remaining $165,000 spent? Why was it not spent on the Program?

A: I was not generally privy to funding decisions made in FY 1989 and can provide only a limited perspective. I do know, however, that during FY 1989 many demands were placed on the new Technology Administration to support Departmental technology initiatives. Many of these initiatives pertained to the U.S.-Japan relationship and, in order to insure that the new Technology Administration would be a "player " in these important issues, such as implementing the new U.S.-Japan S&T Agreement, the FSX, the Technology Administration has taken an expansive view of the objectives of its various programs and has used its funds and any other resources that were reasonably available, accordingly. The $260,000 figure relates solely to translation/dissemination activities; the remainder was used for staff support in connection with broader U.S.-Japanese technology issues.

(b) Second, the Japanese Technical Literature Act of 1986 defines a specific set of responsibilities for the Program. While we might agree that the FSX and supercomputer 301 talks are important, these policy matters are not within the scope of the Program nor has Congress authorized the use of Program funds for these other purposes. Please explain the justification for using these funds in this way.

A: If the Technology Administration is going to succeed, its various programs have to be integrated and seen as contributing to the broader objective of making U.S. industry more competitive in world markets. Its predecessor, OPTI, managed its various programs as loosely-confederated fiefdoms and, as a result, was generally not regarded as a major force in federal R&D policymaking. It is my understanding that this was the problem that Congress intended to address when it replaced the old organization with the new Technology Administration. I hope the Committee will permit us a broad degree of flexibility in interpreting the mandates of our various programs, given our relatively small size and breadth of our responsibilities. I would welcome any guidance in this regard, and look forward to working with the Committee on this matter in the future.

(c) Third, if you believe that the Technology Administration needs a capability to analyze international technology policy issues, including issues regarding Japan, we would welcome your recommendations concerning the necessary statutory authority and budgets for this activity. Do you have such recommendations at this time?

A: I am very pleased that the Committee appears to recognize the importance of this function. I have no specific recommendations at this time. However, I look forward to working with the Committee on these issues.

Q: New Personnel. Your answers to the prehearing questions indicated that you have hired two new political appointees, Mr. Endres and Mr. Lieberman. I know that they add to the capabilities of the Office of Technology Policy, but in a fixed budget where do the funds for their positions come from? Have other positions or programs been cut?

A: Neither of these positions should be thought of as "new" in the strictest sense. Each is a successor to earlier TA-related SES positions that had been paid for out of programs subsequently transferred to the new Technology Administration, but each has additional duties.

- The Office of Commercial Affairs, which Mr. Lieberman heads, includes the Technology Administration's Strategic Resources program. This program had previously been managed by a member of the Senior Executive Service who is now deceased. The Department concluded, as part of the reorganization process, that it could no longer afford to devote a scarce SES slot exclusively to the management of this one program.
- Mr. Endres performs many of the same management functions that were formerly performed by the Associate Under Secretary for Economic Affairs. These included direct policy management of the Japanese Technical Literature Program, the Federal Technology Management program, the Office of Strategic Resources, and, when requested, policy support for various other activities of the old Office of Productivity, Technology and Innovation.

Q: Enabling technologies. A story in the November 20, 1989, Wall Street Journal contains the following statements regarding Sematech and high-definition television (HDTV):

> D. Allan Bromley, the Administration's top science official, said Sematech was involved in so-called enabling technologies that underlie a variety of industries, and thus is a proper vehicle for government investment. "It should receive continued funding," he said, "I've heard of nothing to the contrary."
>
> ...Some officials, such as Budget Director Richard Darman, have opposed providing funds for commercial ventures in HDTV. But Mr. Bromley said the White House does not consider DARPA's program, which supports research in underlying video-display technology, such an "industrial policy."

Is it correct, therefore, to say that the Bush Administration has now concluded that it is appropriate for the Federal Government to fund research to create new enabling technologies? If so, does the Bush Administration now support the Commerce Department's new Advanced Technology Program, an effort whose goal is to help create new generic technologies?

A: The Bush Administration has reviewed the ATP issue as part of the FY 1991 budget process. That budget will be submitted to Congress in January. I regret that I cannot provide the Committee with its details at this time.

Q. Do you believe it is appropriate for people who have had high access to U.S. policymaking to take jobs representing foreign companies?...Do you plan to institute any policy regarding that matter for the people who work under you, if you are confirmed? If you would like to supplement your response for the record, we will look forward to getting that response.

I firmly believe in the principle that all federal employees, regardless of their level, must avoid both the reality as well as the appearance of any impropriety. If laws or regulations are not up to the job of providing the public with this fundamental protection, they should be changed, modified or supplemented.

At the same time, I also recognize that restrictions, if unreasonably related to the harm to be avoided, can make it very difficult for the Government to attract the kind of people it needs to get the job done and can send an unintended message to the public that perhaps these officials cannot really be trusted.

Accordingly, the answer to the question of whether we need additional restrictions of the sort described depends principally upon the harm that we are seeking to avoid.

Current law clearly curtails the ability of former officials to take undue advantage of information they obtained or relationships they formed while working for the Government. Time limitations are placed on their ability to represent clients on particular matters before any agency as well as on their ability to attempt to influence their former agency.

In addition, President Bush, who has made it clear that "(p)ublic service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain," has issued a strong Executive order making ethical conduct a top priority and has also proposed a number of significant legislative changes. Moreover, the Commerce Department itself has issued regulations authorizing it to make those who violate post-employment laws personae non gratae as far as official Department business is concerned.

Thus, to the extent that the concern relates to the possible misuse of information or exertion of undue influence over former colleagues and subordinates, I incline to the view that the current legal/administrative mechanisms, together with the President's proposals, are generally equal to the task without taking the drastic step of prohibiting former high level officials from serving a specified category of clients.

A second class of problem is the possibility that high level federal S&T officials will misuse their positions of trust to develop or advocate policies aimed at attracting potential clients rather than advancing the public interest. I have worked with federal S&T policymakers throughout my career and their dedication and devotion to duty is their hallmark. If this is the danger to be avoided, I would make three observations. One is that these will be rare cases. Another is that conflict-of-interest laws are designed to deal with precisely that sort of issue. The third is that the possibility of misusing a policy position to benefit a potential employer or client can arise in many agencies, in many subject areas, and can involve many classes of potential employer. I would be reluctant to single out foreign entities as a special class.

In my view, the real problem is neither of these. Rather, it is the problem that was best summed up in the article "U.S. Experts on Japanese Often Have Economic Ties" that appeared in the Washington Post on the day following the hearing on my confirmation: Many well-known figures in law firms, academia, think tanks, business, lobbying firms, et al., who are in positions to influence public debate on highly-charged issues, such as the direction of the U.S.-Japan relationship, are becoming increasingly dependent for financial support on foreign clients likely to have a stake in the outcome of the debate. Moreover, they are often contributing to the public dialogue without revealing their ties to the foreign stakeholders.

I do not believe we can get at this kind of problem by the simple expedient of barring former Government officials from taking on foreign clients. Former officials will always look for clients/employers from among those who seek to benefit from their expertise. That is not inappropriate as a matter of principle. I have some real reservations about singling out foreign entities as a "wrong" class of employer. Moreover, the experts involved who can influence public debate are not confined to former Government officials.

Rather, I believe the best way to approach this kind of problem is to concentrate on ways of ensuring that the public, the Congress, and federal officials themselves have the information they need to assess the objectivity of the advice that they are given from these sources.

Accordingly, for the reasons indicated above, I tend to view a restriction on the ability of former officials to serve a foreign client as excessive, based on the information currently available to me. I would not hesitate to alter my views if circumstances warranted. I assure the Committee that, if confirmed, I will make every effort to ensure that my employees are aware of their legal and ethical obligations and I will work very closely with the Department's General Counsel to ensure that the rules are rigorously enforced and that any discovered loopholes are promptly plugged.

For the sake of completeness, I should also add that I have been advised that I would not have the authority to adopt special rules for former employees of the Assistant Secretary's office, absent statutory authority.

NOMINATION—NOVEMBER

THURSDAY, NOVEMBER 16, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met pursuant to notice at 2:05 p.m. in room SR-253, Russell Senate Office Building, Hon. J. James Exon presiding.

Staff members assigned to this hearing: Robert Holleyman, staff counsel and Ruth Johnson, minority professional staff member.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. The committee will please come to order.

The Committee on Commerce, Science, and Transportation meets this afternoon to consider the nomination of Edward Emmett to be a member of the Interstate Commerce Commission. Mr. Emmett is a former member of the Texas House of Representatives where he worked extensively in the field of transportation, serving on the committee that had oversight over the Texas Railroad Commission as well as serving on the Transportation Committee.

The Interstate Commerce Commission, as we all know, is composed of five commissioners. Mr. Emmett has been nominated to replace Commissioner Frederick Andre whose term expired in 1987. The term for which Mr. Emmett has been nominated will expire December 31, 1992.

Today's hearing comes at a critical juncture in the history of the ICC. Considerable controversy has surrounded the Commission in recent years, particularly with regard to the Commission's implementation of the Staggers Act. I am hopeful that as we begin to see a change in the makeup of the Commission, this controversy will be put to rest and that shippers and carriers will both begin to regain confidence in the ICC.

The deregulation of the transportation industry has raised important issues that must continue to be addressed by the ICC. I look forward to hearing Mr. Emmett's views on the role that he will play on the Commission in protecting the consumers and ensuring a strong future for our Nation's transportation network.

I will call on Mr. Emmett in just a minute. I will precede that by recognizing our distinguished Senator from Texas who is here to introduce him.

First, I would ask my colleagues if they have any opening statements.

Senator Kasten.

OPENING STATEMENT BY SENATOR KASTEN

Senator **Kasten**. Mr. Chairman, thank you.

First of all, Mr. Chairman, thank you for holding this hearing on the nomination of Ed Emmett to become a Commissioner at the Interstate Commerce Commission. I am pleased that we are now moving forward on a nomination that has been a matter of concern to both of us, and I am hopeful and optimistic that if this hearing goes well—and I have every reason to believe that it will—we can move quickly to expedite this nomination sometime before we go out for Thanksgiving.

Ed Emmett is a nominee whose experiences uniquely qualify him to be an ICC Commissioner. Among other things, he has served as a member of the Texas House of Representatives. That service included membership on the Texas House Transportation Committee. He was also involved in transportation issues as the Executive Director of the Texas Association to Improve Distribution.

He also has Washington experience as a former special assistant at HEW and then more recently as a consultant at the U.S. Department of Transportation.

So with that, Mr. Chairman, I hope that the Commerce Committee will move quickly to confirm Ed Emmett so that he can go to work to help the ICC tackle some of the tough issues that confront him.

Again, Mr. Chairman, I thank you very much for scheduling this hearing at this date.

Senator **Exon**. Thank you, Senator Kasten.

Certainly Senator Rockefeller, whom I wish to call on next for any opening statement that he has, has been a key player in this matter of trying to have a better understanding between this full Committee of Commerce and others in the United States Senate that have had concern about the way things have or have not developed, depending on someone's point of view.

Senator Rockefeller, do you have an opening statement?

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator **Rockefeller**. I do, Mr. Chairman, and I thank you very much not only for your comments but also for your shared concern in having this whole process work correctly.

As you know, Mr. Chairman, I have long been concerned about the ICC's implementation of the Staggers Rail Act of 1980. The principles of the Act are good; that is, that competition, where there is competition and where that is possible, that is the way it should be, and that there should be protection for shippers, from monopoly power where competition is lacking.

Unfortunately, at least in my judgment in the last several years since the enactment of the Staggers Act the ICC has shirked its responsibility under the law to protect captive shippers and rendered therefor the law, in my judgment, a dead letter.

It created a maze of burdensome and unfair procedures from which no shipper seeking fair rail rates could emerge with justice. Although hidden from public view in the increased costs of basic industry and agriculture, the result was widespread economic damage. The damage was not just in West Virginia and Kentucky and Southwestern Virginia to the coal industry but also to other states, economic damage to farmers, economic damage to the chemical industry, higher cost for electricity consumers and other damage of that sort, in my judgment.

As the Chairman knows, I have sponsored legislation in the last two Congresses to ensure that the ICC carries out its responsibilities. While the committee declined by a one-vote margin last year to favor my bill and to adopt that legislation, a majority of the committee did sign a letter to the Interstate Commerce Commission and to its chairman urging the ICC to do the job itself, suggesting that in the absence of the ICC doing the job itself that the Senate would contemplate the possibility of revisiting legislation.

The ICC's record since that time and since that letter, in my judgment, has shown some positive signs, particularly as reflected through their judgment on the rail cost adjustment factor; that is, the inflation index. Much more needs to be done.

For example, the Commission needs to develop a simplified rate reasonableness procedure for small shippers who cannot afford the complicated one that is there now.

It needs to reconsider its use of product and geographic competition in deciding whether to hear rate cases.

It needs to be more responsive to affected communities in abandonment cases, of which there are plenty.

It needs to improve the accuracy of its revenue adequacy test.

It needs to be more vigilant in protecting rail-to-rail competition, competitive access.

Mr. Chairman, the ICC is a small agency administering a highly technical body of law. Nevertheless, it is supposed to stand watch over basic principles of our free enterprise economy. In recent years, in my judgment, it has failed to meet those responsibilities.

One of the purposes of this confirmation process under the Constitution is to provide an opportunity to restore to administration of the law fidelity to its underlying purposes. In this hearing, we have an opportunity to continue the process we began last year of returning supervision of rail transportation to a balanced approach contemplated in the Staggers Act.

I am hopeful that our nominee shares that goal, and I look forward to his testimony.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Rockefeller.

Another Member of the committee who has worked very closely with Senator Kasten, the Ranking Member, and myself along with this issue that we have touched on in our opening remarks is Senator Pressler from South Dakota.

Senator Pressler.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Thank you, Mr. Chairman, very much.

Let me say that I very much want to hear the nominee's specific statement on a couple of questions in a couple of areas. If he could remember or make a note, millions of bushels of corn are on the ground in South Dakota because of a shortage of boxcar hopper cars. What do you think has led to this shortage, and what can the ICC do to ensure the availability of cars?

Also, as part of my opening statement I have a portion of a letter I have received from a constituent, Mr. Robert Appleway, President of Apple Lines in Madison, South Dakota. He wrote to me, "Everything in the motor carrier industry has suddenly gone out of control. Motor carriers can't control the driving supply, the fuel prices, what the shipper is willing to pay in freight rates, insurance costs and many other elements." He is a small trucker, relatively speaking, but he describes an aura of desperation in the trucking industry.

As an ICC Commissioner, what words of hope or what specific solutions do you have for him?

Mr. Chairman, I shall have to be absent for a while. I hope to return. This is the day for getting all the nominees through the Foreign Relations Committee and the various other business that is going on, and I am trying to help form quorums here and there. So I will be back and forth.

Senator EXON. Senator Pressler, thank you very much. We understand because we are all in that very difficult position that has come down with these hopefully closing days of the session.

Senator Burns, do you have an opening statement?

Senator BURNS. I have no opening statement as such, Mr. Chairman. I want to thank you for these hearings today. I have some questions, and I think that is what we all want to get to.

Senator EXON. Thank you very much.

I have a statement that Senator Hollings would like to have included in the record.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

I welcome Mr. Emmett to the Committee. Over the past several years, the Interstate Commerce Commission has been shrouded by a cloud of controversy. I am hopeful, Mr. Emmett, that your experience in the transportation field and as a legislator has left you particularly well suited to the task of restoring this Committee's faith in the collective judgment of the ICC.

I anxiously await your testimony. I will be particularly interested in hearing your views concerning the consequences from deregulation of the railroad and trucking industries, as well as other issues.

The ICC serves an important regulatory function. I look forward to your responses and, if confirmed, your service on the Commission.

Senator EXON. I am now pleased to recognize my friend and colleague from Texas, Senator Phil Gramm. I cannot imagine, Senator Gramm, the reason why you are here today. There is nothing that this committee can possibly do about insisting that a Texas team be represented at any of the Bowl games this year.

I start out by admonishing you, please do not bring that up.

In any event, we are delighted to have you here.

STATEMENT OF HON. PHIL GRAMM, U.S. SENATOR FROM TEXAS

Senator GRAMM. Mr. Chairman, let me first say I am very grateful for your holding these hearings. It is a tough business for people to be confirmed in order to serve their country. Ed Emmett has waited since spring for final action, and I want to thank you in these waning hours of the session for dealing with this nomination. I hope we can approve Ed Emmett before we adjourn.

Let me just try to be brief. I know Ed Emmett well. I have worked with him in his capacity as Chairman of the Energy Committee of the Texas House of Representatives. I also know him as a leader in transportation areas in our state as a member of the Transportation Committee of the Texas House.

Texas has many of the problems that have been outlined here. We have problems in terms of coal shipment, agriculture and access to markets.

Ed Emmett, Mr. Chairman, has dealt with all of these problems from a State point of view. I think he really brings great qualifications to this job, which sounds to me, listening to this committee, as if it is going to be tough duty.

He has been effective and successful in the private sector. He has been a distinguished legislator. He has served as a member of the Interstate Oil Compact Commission, as a member of the Southwest Regional Energy Council, and as a member of the American Legislative Exchange Council. He has been actively involved in many of these issues for many years, and I really believe that he is the right person at the right time to do the job that this committee wants done.

So I appreciate having an opportunity to be here to strongly recommend that this committee report favorably the nomination of Ed Emmett to be a member of the ICC.

Senator EXON. Senator Gramm, thank you very much.

We will now recognize Mr. Emmett.

Thank you for coming over, Senator Gramm, to introduce your colleague from the State of Texas.

Mr. Emmett, I will recognize you now. Suffice to say that you and I have had conversations, and you know the reason that we have not been able to move on your nomination more speedily. As soon as the requirements that the committee felt were necessary were met, we responded immediately to hold this hearing so that we can hear your statement and then ask you some questions on the position for which you have been nominated by the President.

So I will recognize you at this time, Mr. Emmett, with all welcome from the committee.

[The biographical sketch and questions and answers follow:]

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
LLOYD BENTSEN, TEXAS
JOHN F. KERRY, MASSACHUSETTS
JOHN B. BREAUX, LOUISIANA
RICHARD H. BRYAN, NEVADA
CHARLES S. ROBB, VIRGINIA
JOHN C. DANFORTH, MISSOURI
BOB PACKWOOD, OREGON
LARRY PRESSLER, SOUTH DAKOTA
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ROBERT W. KASTEN, JR., WISCONSIN
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RALPH B. EVERETT, CHIEF COUNSEL AND STAFF DIRECTOR
WALTER B. McCORMICK, JR., MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1\. Name: Emmett (Last) Edward (First) Martin (Other)

Address: 90 Woodland Lane
Round Rock, TX 78664 (Current residence)
(Business)

2\. Position to which nominated: Interstate Commerce Commission

Date of nomination: June 8, 1989

3\. Date of birth: August 14, 1949 (month) (day) (year)

Place of birth: Overton, TX

4\. Marital status: Married

Full name of Spouse: Gwendolyn O'Brien Emmett

5\. Names and ages of children: Adrienne Elizabeth (13)
Joseph Arthur (11)
Robert O'Brien (6)
Patricia Kay (4)

6\. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Rice University	8/67-5/71	B.A.(Economics)	5/71
The University of Texas at Austin	8/72-5/74	M.A.(Public Affairs)	5/74

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
5/89	Present	U.S. Dept. of Transportation	400 7th SW Washington, D.C.	consultant
1/89	5/89	self	1005 Congress Austin, TX	public affairs consultant
7/86	1/89	Texas Association to Improve Distribution	701 Brazos #500 Austin, TX	executive director
1/79	1/87	State of Texas	P.O. Box 2910 Austin, TX	Member, House of Rep.
12/83	7/86	North Houston Assoc.	250 Sam Houston Pkwy. Houston, TX	executive director
8/81	12/83	self dba The Public Affairs Group		advertising/public rel.
9/79	8/81	Gregory/Emmett, Inc.	523 N. Belt E. Houston, TX	advertising/public rel.

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

Member, Texas House of Representatives 1979-1987

Special Assistant to the Secretary of Health, Education and Welfare 1975-1976

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Republican State Representative, 1979-1987

Republican nominee for Railroad Commission of Texas, 1988

Member, Candidates Committee, Associated Republicans of Texas

PRE-HEARING QUESTIONS OF THE MAJORITY FOR EDWARD M. EMMETT

NOMINEE FOR COMMISSIONER, INTERSTATE COMMERCE COMMISSION

1. Why do you think you are qualified to serve as an ICC Commissioner? Why do you want to serve as a member of the ICC?

Answer: My education and experience have combined economics and public policy, a combination which is well-suited to my prospective position as a member of the Interstate Commerce Commission. For the past ten years, my career has focused on transportation policy. As a member of the Texas House of Representatives Committee on Transportation for eight years, I dealt with a wide range of transportation issues. And, as Chairman of the House Committee on Energy, I had oversight responsibility for the Railroad Commission of Texas, the agency which regulates intrastate transportation as well as the state's energy industry. From 1986 until 1989, I served as executive director and chief spokesman for the statewide organization leading the effort to reform intrastate transportation regulation in Texas.

I sought appointment to the ICC because I believe transportation is a key component of this nation's economy. During the past decade, the Congress has taken some bold, necessary steps with regard to transportation policy and I want to play a role in implementing that policy.

2. What are your views regarding the future of the ICC?

Answer: While I have strong views about the functions performed by the ICC in assuring that the country has a safe, efficient, and competitive surface transportation system, I have no personal feelings regarding the institutional future of the ICC. If confirmed, I intend to serve to the best of my ability as a Commissioner. If at some time during my term of office functions of the ICC are transferred to another agency or department, then I will work to make sure the transition is as smooth as possible.

3. Are there any areas in which you have observed a need for change in either the direction or operation of the ICC?

Answer: I have not had an opportunity to observe the operation of the ICC in close detail. During the past several months, however, I have reviewed hearing transcripts and news reports. Based upon those readings, I sense an on-going need for clarity and openness in the Commission's dealings with the public and Congress. Since I come from a legislative background, I have a predisposition toward regular, open meetings of the Commission, and, should I be confirmed, I will work to see that this is accomplished.

4. You have been closely identified with legislative efforts to deregulate the trucking industry within the state of Texas. Please describe your activities and views in this regard. How do you feel your experience within Texas will correlate with your consideration of motor carrier issues at the ICC?

Answer: After several years of serving on the Texas House of Representatives Committee on Transportation, I realized that Texas' regulation of intrastate trucking was placing the state at a competitive disadvantage in trying to attract and retain many businesses. Intrastate trucking rates were substantially higher than interstate rates, so businesses were locating in our neighboring states and serving Texas markets from there. I introduced legislation in 1985 to ease entry into the trucking business and to provide for some rate flexibility within the industry. This legislation was supported by numerous statewide consumer and business organizations and was editorially endorsed all across Texas. At the same time, I introduced legislation to bring Texas into compliance with the Federal Motor Carrier Safety Act. Texas was placing its regulatory emphasis on economics rather than safety, a situation that appeared backwards to me. Unfortunately, I was unsuccessful in 1985 in securing passage of this legislation.

Upon leaving the legislature, I became executive director of the Texas Association to Improve Distribution, a non-profit organization of companies, individuals, and other associations seeking intrastate regulatory reform. I served as the chief spokesman for TEX-AID and was responsible for its administration.

In 1987 TEX-AID, along with chambers of commerce throughout Texas and almost forty organizations ranging from Common Cause to the Texas Farm Bureau to the National Federation [illegible] Independent Businesses supported legislation to make Texas more competitive in the area of transportation. A compromise bill clarifying the Railroad Commission's statutory authority eventually was passed with the hope that the Commission would address the problem.

In 1988 I was the Republican nominee for a seat on the Railroad Commission and I continued pushing for regulatory reform during that race. For my stand, I was endorsed by 34 major newspapers, but I lost the election to the incumbent. Since that election, however, the Railroad Commission has taken some steps toward competition and safety, as more and more glaring examples of problems have been presented.

My experience in the Texas regulatory reform effort brought me into contact with a wide variety of shippers and carriers and has given me an understanding of differing viewpoints. Most importantly, though, in looking for ways to reform Texas regulation, I became familiar with the broader issue of transportation regulation at the federal level as well as in other states.

5. What are your views on the possible impact of increased market concentration within the trucking industry, particularly within the less-than-truckload segment of the industry? It was recently reported, for example, that the nation's five largest LTL carriers last year held approximately 44.5% of the L freight market, as compared with approximately 23.9% of the market in 1979, the last year before enactment of the Motor Carrier Act. Revenue for these carriers was reported at $6.7 billion in 1988 as compared with $4 billion in 1979. Do you believe increased concentration has any longterm implications for shippers or the industry itself?

Answer: Many factors should be considered in analyzing the concentration of the nation's LTL carriers. An initial consideration is that the Motor Carrier Act of 1980's eased entry provisions resulted in thousands of new carriers entering the trucking industry and existing carriers expanding and rationalizing their route networks. This influx of competitors greatly expanded the range of price and service options available to shippers.

I understand that in the truckload (TL) sector, new entry or expansion has resulted in a very competitive provision of services with minimal concentration of carriers. In the less than truckload sector (LTL), eased entry has also resulted in a broad expansion of existing carriers networks, consolidation of carriers, and greater competition. I understand that larger LTL carriers have expanded their operations to a national scope by extension into new territories or by mergers. Regional LTL carriers have also expanded their operations and compete aggressively with other carriers. While the data submitted does point out that larger carriers continue to increase their share of national LTL revenues, these gains are generally being achieved by expansion into new territories -- rather than through expansion and increased concentration within their previous routes. Growth in this fashion has increased competition and decreased concentration in individual markets by increasing the number of efficient carriers available to shippers.

At present, I do not view the level of concentration to be harmful.

6. What correlation, if any, do you see between safety and the ICC's regulatory activities insofar as motor carriers are concerned?

Answer: Motor carrier safety results from the enforcement of _safety_ regulations, not from economic regulation. Toward that end, the ICC must require motor carriers to meet safety fitness standards in order to _obtain_ and _keep_ operating authority. I also believe that initial enforcement of safety standards should be done at the state level, which is why I sponsored legislation to bring Texas into compliance with the Motor Carrier Safety Act.

7. The ICC has been called upon to consider the reasonableness of rates sought to be applied retroactively to shippers for transportation services rendered at negotiated but unfiled rates. This "negotiated rates" or "undercharge" issue has generated a great deal of controversy. What are your views on this issue and the ICC's actions in this area?

Answer: In my opinion, negotiated rates relied on in good faith by the shipper should stand, so, without commenting on the merits of any particular case, I generally support the actions taken thus far by the ICC. However, some courts have not sent the cases to the ICC, so there is no consistency. It is my understanding that legislation might be required to finally settle the issue for all cases since there have been conflicting court rulings.

8. How would you assess the overall impact of the Motor Carrier Act of 1980 on the trucking industry and the shipping public?

Answer: The overall impact of the Motor Carrier Act of 1980 has been positive on both the shipping public and the trucking industry. The shipping public of this country has realized tremendous savings from increased competition. Within the trucking industry there has been a period of transition in which there were losers as well as winners. Overall, though, the Act has given this nation a more efficient, competitive motor carrier system which has benefitted the general public.

9. Based on your observations of the ICC and transportation issues, how would you characterize the concerns that have been raised about the Commission's implementation of the Staggers Rail Act of 1980? Do you have any general views regarding the genesis of this controversy, its resolution to date and future prospects?

Answer: Generally, the major concern which has been expressed about the ICC's implementation of the Staggers Rail Act involves the treatment of "captive shippers." The controversy seems to have been fueled by a feeling that the Commission was or has been ignoring the legislative mandate to protect "captive shippers." Since I have been in Washington, I believe this issue has been somewhat defused as the Commission has addressed some of the concerns. While I have not yet been involved in the details of the issue, I recognize the need to implement fully the intent of all sections of the Staggers Act. If the ICC acts judiciously, general controversy should continue to abate.

10. In the Staggers Act, Congress sought to achieve less regulation of the rail rates and more reliance on competitive market forces. The act also provides that when "a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable." How would you seek to interpret this provision?

Answer: My interpretation of this section is that the ICC has a mandate to ensure that rail rates are reasonable in any instance where a rail carrier has "market dominance." Congress developed a "market dominance" jurisdictional test and the Commission has implemented rules to gauge a railroad's ability to raise specific rates unconstrained by competitive factors. I understand the Commission has developed guidelines to determine the permissible upper limit of a rate for market dominant railroad movement under a theory called "constrained market pricing."

I will, of course, closely review the Commission's definition of market dominance and the guidelines for rate reasonableness before I approve their application in any case in which I voted.

11. To what extent do you believe the ICC should use its authority to order "competitive access" to promote competition within the rail industry?

Answer: Competitive access takes three forms: joint use of terminal facilities, reciprocal switching, and joint rates. Under current law as amended by the Staggers Act the ICC may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal owned by a rail carrier to be used by another rail carrier *if* the Commission finds that use to be practicable *and* in the public interest, *or* where such agreements are necessary to provide competitive rail service. The Commission may also require one rail carrier to provide reciprocal or mandatory switching for another rail carrier under the same statute. The carriers are responsible for establishing the conditions and compensation for such use of the facilities or such reciprocal switching, but if the carriers cannot agree, the Commission may establish such conditions and compensation.

The Commission has adopted rules and regulations implementing this statute. The first case interpreting these rules was the 1986 *Midtec Paper Corp.*, v. *C.&N.W. Transp. Co. - Use of Terminal Facilities and Reciprocal Switching Agreement*, which was affirmed by the D.C. Circuit in *Midtec Paper Corp.* v. *U.S.* in 1988. The rules require use of mandatory switching or mandatory access where it is necessary to remedy anticompetitive behavior, or to prevent such behavior in the future. I support these rules and will not hesitate to apply them where appropriate.

12. How well do you believe the Staggers Rail Act of 1980 has worked in its goal of improving the health of the nation's rail industry?

Answer: Throughout the 1960's and 1970's the railroads' financial health seemed to go from bad to worse, with many on the verge of bankruptcy. Shippers were poorly served by a physically deteriorating rail network, and railroads were unwilling to expend resources to upgrade inadequate service levels without an opportunity to earn a competitive return on their investments. The future of the private sector railroad system was in jeopardy.

Congress passed the Staggers Act to reduce economic regulation in an effort to spur improvements in rail service by improving the economic climate in which railroad companies operated. Much of the regulation that remained was to provide protection for the shipping public, specifically captive shippers, and to ensure the continuation of a national rail system. My observation is that the Staggers Act has worked remarkably well in improving the health of the nation's rail industry. Profit and service levels have shown steady progress. One of the more pleasant surprises of the Staggers Act was that this improvement in the railroads' health primarily was brought about by cost decreases, not by rate increases. The Commission's figures show rail rates, after adjusting for inflation, have fallen significantly since Staggers.

While the results have of course varied from railroad to railroad and from shipper to shipper, my overall impression is

that the reduced regulation brought about by the Staggers Act has directly led, on average, to lower rates and to improved service and profit levels.

13. Do you believe that anything more needs to be done to improve ICC procedures insofar as they relate to the ability of small shippers to initiate and pursue rail rate cases?

Answer: While there have been some legitimate concerns that the captive shipper rate reasonableness process is too complex, costly, and time consuming, especially for small shippers, the Commission has recently made some progress in this area. The Commission has recently adopted a new costing system, the Uniform Rail Costing System (URCS). This system was recommended by the Railroad Accounting Principles Board (RPAB) and permits rapid calculation of the variable costs associated with specific movements. It is designed as a user-friendly, desktop computer program and should substantially reduce the burdens and costs associated with the rate reasonableness process. Since this is a new system, it is hard to judge whether the adoption of URCS alone will serve to alleviate any problems which may have occurred in the past, and there may be other changes which have to be made. As a Commissioner, I will continue to research and evaluate all options in order to ensure that shippers will have a reasonable and timely procedure to file rate complaints.

14. What are your general views on the role of labor protection in connection with rail line sales, abandonment applications and requests for merger authority?

Answer: As I understand it, the Commission's policy concerning labor protection and line sales continues to evolve. The Supreme Court's recent decision in Pittsburgh and Lake Erie Railroad Company v. Railway Labor Executives Association left a number of questions unanswered. Most significantly, the Court declined to indicate how the requirements of the Railway Labor Act and the Interstate Commerce Act can be reconciled in line sale cases. In light of this decision, at the earliest possible time, I want to find out what these statutes dictate concerning the Commission's proper role and to follow that mandate.

As for the issue of labor protection in abandonment cases, the Interstate Commerce Act clearly requires labor protection in those circumstances, and I intend to see that the requirements of the Act are followed.

Requests for merger authority also require labor protection, but as with line sales, the law seems to be in a state of flux. Recent decisions by federal courts of appeal have indicated that the authority of the Commission to modify the terms of collective bargaining agreements may be more limited than the Commission had understood. Again, I intend to ascertain what the law is concerning the Commission's proper role is in these proceedings, and to follow that law.

15. In 1988, the ICC approved the merger of the nation's two largest bus companies, Trailways Lines, Inc., and Greyhound Lines. How do you view the state of interstate bus transportation in light of this merger and other factors such as the Bus Regulatory Reform Act of 1982?

Answer: Interstate bus transportation has fallen on very hard times in recent years because of competition from air carriers, private automobiles and even Amtrak. Trailways was sliding inevitably into bankruptcy, so I view the merger with Greyhound as the best option to preserve service and jobs. I believe the interstate bus industry can survive as it defines a new role for itself. The Bus Regulatory Reform Act of 1982 will, hopefully, provide the framework within which that role can be defined.

STATEMENT OF EDWARD M. EMMETT

Mr. EMMETT. Thank you, Mr. Chairman, Members of the committee. I very much appreciate you giving me this opportunity at these very busy times in your schedule.

Before I start my opening statement, I would like to respond to something you said, Mr. Chairman, about football. Since I went to Rice University and we just this year got the onus off our back of having the longest losing streak in major college football, I don't think we're a threat to go to any Bowl game at all. But if enough people get put on probation, Rice may end up in the Cotton Bowl after all.

Nobody ever accused Rice University of cheating at football.

I am honored that President Bush has nominated me to serve on the Interstate Commerce Commission. I am eager to get to work as a commissioner, and I am committed to doing everything in my power to implement the laws enacted by Congress in a fair, impartial manner with the result being the most efficient, safest transportation system practical.

Transportation regulation to the average American is a very dry subject. When stopped at a rail crossing by a long freight train, the typical person does not think about the intricate rail network and the role it plays in the economy of this country; and to most motorists, the motor carrier industry is merely the grill of a huge truck looming in their rearview mirror.

To me, though, the various transportation modes are the arteries and veins of this Nation's economic body. All aspects of that transportation system must be kept healthy. Shippers must be served well, secure in the knowledge that their products can and will be moved efficiently.

Carriers in all modes must remain financially sound. Transportation workers must feel that they are a dynamic, integral part of the overall system, and the public at large must have confidence in the safety and stability of transportation activities.

If confirmed, my job as commissioner will be to assure that those parts of the system under the jurisdiction of the ICC remain efficient, stable and safe. I very much look forward to the challenges and opportunities of this job and at this time will be happy to answer any questions you might have.

Senator EXON. Thank you, Mr. Emmett.

I do not have the names, if any, of the members of your family who are here with you today. If so, we would be pleased to have you introduce them.

Mr. EMMETT. I would be pleased to, but, due to the short notice and the fact that yesterday was my five year old's birthday, they are all still in Texas.

Senator EXON. We understand that. Let me start out with the questions. I believe that you can tell from the opening statements that were made by all Members of the committee that the ICC and their decisions are critically important to both shippers, especially captive shippers, and the transportation industry as a whole.

I think I could just start out by saying that at least in the opinion of this Senator we have had a real problem in the last few years with the ICC and how they interpreted their responsibilities under deregulation, and I refer particularly to the Staggers Act as it affects the railroad industry but other things as well.

There are those on this committee who could be, I think, adequately described as pro-deregulation. There are those on this committee who have serious reservations about that. There are others of us who are somewhat ambivalent on the issue but feel that we have responsibilities to carry out here in the interpretation of the law as we saw it.

I have no quarrel basically with the beliefs of some of the past members of the ICC. I believe those members were very sincere in what they interpreted their responsibilities were under the law.

I think, however, that there was considerably more than a majority opinion on this subcommittee and on the Commerce Committee as a whole that the ICC members were not in tune with what most of us felt were provisions, particularly in the Staggers Act, that called upon the ICC to take more than a casual look at captive shippers and others similarly situated under the circumstances.

With very few exceptions, we felt that the ICC were so pro-deregulation that they bent the law and especially those portions of the Staggers Act that were designed to help captive shippers and other similarly situated that they did not have, nor did they get a fair hearing in many instances before the ICC.

Therein, as you know, lies the problems that we have had. I think that as far as this Senator is concerned, and I think I speak for the majority of the Members of this particular committee, all that we want and the questions we will be asking you today is to see whether if you are confirmed, you will be in the mold of those that we have had difficulty over the last several years with the ICC, or whether, as we hope, that you come with an understanding of the pros and cons of both the shippers and the carriers and, most importantly of all, those people who get caught in between who might otherwise not pay much attention to the whole matter of interstate commerce.

You said, Mr. Emmett, in one of your stated responses to the prehearing questions that you have, and I quote, "no personal feelings regarding the institutional future of the ICC'.

May I take that to mean that you are not an advocate of sunsetting the ICC as some of your predecessors from the Commission and in the administration have suggested?

Mr. EMMETT. Mr. Chairman, I am neither an advocate nor an opponent of sunsetting the ICC. That is not a decision that I as a commissioner really will have anything to do with, particularly since, having not served there at all at this time, I cannot comment very much more than that.

It is not my job to sunset the ICC. My job is to implement the laws that are given to the ICC to implement.

Senator EXON. We have concentrated so far with our statements on the rail industry, but the motor carrier industry is also tremendously important to moving interstate commerce efficiently in these United States.

As a state legislator and as Executive Director of the Texas Association to Improve Distribution, you promoted interstate trucking deregulation within Texas. Is that correct?

Mr. **Emmett**. That is regulatory reform, is what we chose to call it, but yes, sir.

Senator **Exon**. You have also stated that you believe that the overall impact of the Motor Carrier Act of 1980 has been positive on both the shipping public and the trucking industry. What, then, are your views on Federal legislative proposal for further deregulation of the trucking industry?

Mr. **Emmett**. I have not had a chance to review the specific proposals that are before Congress at this time. I guess it would be informative to this Committee if I would go back and tell you how I got interested in trucking deregulation, regulation reform, in the beginning.

During my second term in the House, my mother-in-law, who lives in Midland, Texas, wanted to send packages to her grandchildren—namely, my children—outside of Houston. She went to UPS, United Parcel Service, and was told that she could not make that shipment because Texas did not allow UPS to operate intrastate. When she asked why not—and if I ever find the driver who told her this I am going to personally strangle him—his response was, "well, the legislature will not let us." She immediately came back with "I will fix that. My son-in-law is in the legislature." I have been interested in trucking ever since. In that sense, she was very much a captive shipper.

I think we are going through a sorting out period in the trucking industry both intrastate and interstate. What I saw in Texas was a situation where the intrastate rates were so high that businesses were moving across the state line to cities like Shreveport, Louisiana, and could serve the State of Texas for less from there than they could from within the state.

That situation clearly had to change. It was under the purview of the Texas legislature and the Railroad Commission, which is where it should be, and I did everything I could to get that change. Since I started that, there have been some changes—very positive ones.

At this time, if there is anything else at the Federal level that needs to be done, I am not aware nor up to date—up to speed with that. I think we are making good progress. There are some cases right now in the courts that might involve the definition of interstate shipments that would clarify some of it, but I have no agenda in that regard.

Senator **Exon**. What are your views on the propriety of collective general increases and rate-making under the Motor Carrier Acts of 1980?

Mr. **Emmett**. Collective rate-making, if it establishes a specific rate, has always caused me some problems, in that I do believe in free market economics to the extent possible.

As I understand the Motor Carrier Act, discounts are available from any collectively set rate, and as long as there is room for free and independent action for reduced rates then I think that that is a fair and equitable system.

Senator **Exon**. I would tend to agree with your general philosophy. The difficulty that we have had with the act of 1980 with regard to motor carriers was the fact that a great number of motor carriers have gone out of business, and I do not know about the State of Texas, but in the State of Nebraska some of the Midlands communities of Nebraska are not particularly well-served at this time.

So while I think it is well to recognize that the free enterprise system in the give-and-take of all of that has been generally good, I would simply cite, for example, that in many rural communities today, while deregulation of the airline industry has been a boon to people who live in Boston or New Ycrk or Chicago where if they want to go to San Francisco or Los Angeles or Dallas, deregulation works fine. If they want to go to Midland, quite a different situation faces them.

The fact of the matter is, it is more expensive for me to travel from Omaha, Nebraska in the eastern end of my state to Scott's Bluff in the extreme western part of Nebraska—about a third or twice as much as it would cost me to fly from Omaha, Nebraska, to Washington, D.C.

Now, that is the free market system working, but I think we should keep in mind that sometimes during the dog-eat-dog practices of the free enterprise system, in that particular situation we have a tendency to break down the total transportation system either as far as the airline industry is concerned, and certainly that is probably even more important today with regard to the motor carrier industry.

I would simply hope that you are not another of those ICC nominees who look at deregulation and the free enterprise system as the salvation of everything that is right and proper for the movement of interstate commerce in the United States.

So I only caution you on that, and I think that to say that the free enterprise system is the answer to all of our ills, when you come to the transportation system it leaves out a substantial portion of the United States of America, and that is something that this Committee is not going to stand for.

My time is up on the first round. Senator Kasten?

Senator KASTEN. Mr. Emmett, Senator Gramm pointed out your work in the State of Texas, and I just wanted to give you a chance to expand on that a little bit in terms of how particularly your work in transportation in the state will fit with the job of an ICC Commissioner here on the Federal basis.

Mr. EMMETT. Senator Kasten, anyone who has spent eight years on a Transportation Committee at any level has dealt with a wide range of issues and I guess the most succinct answer I could give you would be to say that during that time I learned of the various competing interests and viewpoints and had to come to grips with those viewpoints and understand that it is a process where there are differing viewpoints.

I believe that during my time in the legislature, the aspect I am most proud of is my ability to work with others. I was Chairman of the House Committee on Energy, which is a major committee in the State of Texas.

I was Chairman at a time when the House of Representatives was 2-1 Democrat and I was a Republican. I was appointed by a Democrat Speaker, so I think my tenure with the transportation issues and with working with the other legislators has given me the ability to come into a five member body like the ICC and function very well.

Senator **Kasten**. I want to ask you one more specific question with regard to competitive access to promote competition. With regard to question number 11 on page 13 in your set of questions, I was going to submit this question for the record but I am not going to do that because I do not want the record to be open at 5:30 this afternoon when I am hopeful that we are going ~~to be able~~ to vote in favor of your nomination. I would understand if you want to get back to me later, but let me just see how this works.

As part of the Staggers Act, Congress granted the ICC the authority to permit reciprocal switching rights to enhance competitive access. In the Midtech case, the Commission created a regulatory burden which some people feel has discouraged railroads and shippers from seeking competitive access to industry.

Recently, in a 3-2 decision, the ICC indicated that it would apply the same rigorous standard to a request for terminal trackage rights in an acquisition case. Now, this ruling would appear at least to overturn the longstanding position of the ICC to consider such cases under the broader public interest standards.

In your opinion, should terminal rights in acquisition and merger cases be granted only if it can be shown that another carrier has acted in an anticompetitive manner, or should the traditional—I might say the more pro-competitive—standard of actual necessity be used and then, with particular emphasis, in the public interest?

I just want to get your sense, are you for narrowing, or are we going to start to widen out, with regard to the competition standards?

As I say, I am not expecting you to be absolutely prepared on the details of a decision that has only been made recently with regard to the ICC. I would rather have a broader answer in terms of what we mean here and these different standards.

Mr. **Emmett**. Well Senator, it has been made very recently. The procedural decision actually was issued yesterday. I have not had a chance to read that decision in great detail, and since it is a pending case I cannot really comment in any way that would reflect upon that pending matter. Your question presents me with a bit of a problem in that regard.

I will say that in this, as in all other matters, my intention is to look at the law and look at the legislative intent and to try and accommodate that legislative intent. Beyond that, I do not know that I can comment on the specific case before us.

Senator **Kasten**. Well, without commenting on the specific case, are we going to be moving toward narrowing these concepts? They come up in a lot of different places and a lot of different cases, the broader standards of things like actual necessity, public interest, et cetera. Those standards are broader in terms of opportunities for compensation than specific anticompetitive measures. Can you respond in that general range, or would you not feel comfortable in doing that, either?

Mr. **Emmett**. I guess my general answer is, if you look at my background I have tended to go for answers that produce the most competition, if that is a broad enough answer for you, without getting into specifics.

Senator KASTEN. I think this kind of area is one that you are going to be working with a lot, and we look forward to working with you. Mr. Chairman I thank you very much. I have no further questions at this time.

Senator EXON. Thank you very much, Senator Kasten. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman. Mr. Emmett, I do not want this to sound condescending, but you seem to have a really good, open approach to things and that is just a matter of chemistry, the way you have answered the questions, the way you have made your statement—a sense of humor, a sense of balance, and I thought a good answer to Senator Kasten because you could not possibly be expected to have an opinion on something that came from yesterday.

I want to be in a position to vote for you and I hope to be able to vote for you and I just wanted to say that I appreciate your open nature.

Mr. EMMETT. Thank you.

Senator ROCKEFELLER. That is something that the Chairman and I know that we have not always had at the Interstate Commerce Commission.

Let me begin with a question about the ICC's consideration of product and geographic competition as part of the ICC's current market dominance test, which is crucial because it is a test by which it decides whether a railroad exercises monopoly power to a given shipper.

As I think you can appreciate, these inquiries can take a great deal of time and expense—to be more specific, half a million dollars to a million dollars, six to seven years, something tough for small coal operators or others to do.

Yet the ICC's own records show that product and geographic competition have been the deciding factor in just three out of the 100 cases where market dominance has been at the basis of the decision.

Does that not strike you as a lot of time and expense for some average folks for very little gain, particularly since product and geographic competition are not a real world possibility when the revenue to variable cost ratio is over 180, and if it is at 180 that means the market dominance is there because if market dominance were not there, then 180 would not be there?

I was just interested in your response to that.

Mr. EMMETT. Senator, one of the first issues that I asked about upon being nominated was the issue of product and geographic competition and it is my understanding that the burden of proof for proving such competition has been shifted by the ICC over to the carrier from the shipper. I would certainly hope that to be the case, if it is not.

It is an expensive proposition, you are right. I do not see how a relatively smaller shipper, or even a relatively large shipper, could possibly have the staff to prove up product or geographic competition.

It is a very difficult, to me almost esoteric economic theory that might or might not work in the real world, but as I understand it the burden of proof has been shifted, and that should alleviate some of your concerns.

Senator ROCKEFELLER. Well, let us talk about that.

In your pre-testimony you were asked, do you believe that anything more needs to be done to improve ICC procedures insofar as they relate to the ability of small shippers to initiate and pursue rail rate cases—page 16—and you are basically saying that they have a uniform new rail costing system.

It is a user friendly, desk-top computer program, et cetera. Since this is a new system, it is hard to judge. You went on to state that as a commissioner I will continue to do research, et cetera. That strikes me as an answer, but it does not take into account market dominance, it does not take into account rail revenues, things of this sort, so whether that would be a full answer or not is not clear.

This, however, is a real issue. We had a West Virginia coal producer testify before a House Committee that the ICC's own Small Business Office told her that she could not afford to bring a rate complaint case before the ICC, yet she was faced with a rail rate increase that effectively put her out of business, which incidentally it did.

Do you think that this is consistent with the intent of Congress to which you referred in your opening statement?

Mr. EMMETT. The best way I can answer that, Senator, is to again refer to my own background. Dealing with small shippers in the State of Texas, one of my major concerns was that on a smaller scale shippers could not go to the Railroad Commission, for example, and fight rate cases, because not only were the legal expenses too high, but also the other side, the regulated carriers, could extend that case forever, because that was all going back into their rate base, so they were actually being paid—the shippers were paying both sides of that legal fight.

I understand your concern. It is something that will be in the front of my mind at the Commission. I do not have a better answer than that for you right now.

Senator ROCKEFELLER. But you would make every effort to open the doors of the ICC, so to speak, to the small and the average-size shipper? That is your philosophical approach?

Mr. EMMETT. Absolutely.

Senator ROCKEFELLER. Would you commit to revisiting the question of product and geographic?

Mr. EMMETT. Revisiting in the sense of, as I said I have some serious questions about it myself and I certainly want to get those questions answered because, as I said I do not want to apply an esoteric economic theory that does not match up with the real world.

Senator ROCKEFELLER. I think you are answering positively, as I would hope you would on that.

On the rail cost adjustment factor, as you know well, the Commission made what I thought was a very sound decision on allowing productivity to be factored into the rail cost adjustment factor, the inflation index. I thought that was a real step forward on the Commission's part.

Do you know of any reason why the Commission should retreat from that position or substantially revise the index?

Mr. EMMETT. Not at this time.

Senator ROCKEFELLER. On revenue adequacy, the 1988 revenue adequacy determinations, which were expected to show that one or more railroads have finally achieved revenue adequacy. Even under the ICC's unique tests, it was expected that in fact several railroads will become revenue adequate.

This report is long overdue and has not been issued. Do you know of any reason for this, and if you do not will you push for its immediate release?

Mr. EMMETT. No I do not, and yes I will.

Senator ROCKEFELLER. Thank you.

Senator EXON. Thank you, Senator Rockefeller. We will have a second round. I know there are some additional questions to be asked.

Senator Burns.

Senator BURNS. Thank you, Mr. Chairman. I appreciate that, and Mr. Emmett, welcome today. It is good to see you. We had a nice visit in our office, and since we talked, I just want to bring your attention to some situations in the grain shipping business.

We are a captive shipper in Montana. Only one railroad goes through there and that is the Burlington Northern, and it seems as though I can remember back in the late 1970s when we had some rail car shortages up there and we never got a crop to market. We had limited space up there for storage and this type of thing. Most of the wheat and barley out of our state moves to the south to Colorado and to Portland and Seattle for the Pacific Rim.

When we were in that shortage, the railroads encouraged the shippers to buy their own cars or lease their own cars to move, and a lot of them did that. They invested in those cars and put them on the rails so that they could move their crop to the ports.

Well now, in effect, the ICC has changed some of the rules saying that the shippers cannot use their own cars to ship their grain. In other words, the railroad feels no obligation of picking those cars up and delivering the grain.

Do you have an attitude on that? Is that something that has to be looked into? Because just as sure as shooting, if we ever start getting rain again in the northern high plains we are going to have this kind of a situation all over again.

Mr. EMMETT. Senator, at this time I do not have an attitude about that. I do know that there was a recent decision. It was controversial. There are a lot of questions raised, and the whole question of how we are going to treat rail cars in the future is going to be an on-going controversy at the ICC that will be, I am sure, revisited time after time after time.

Senator BURNS. Do you feel that the ICC definitely has a role in those kinds of problems that we experience in, say, large grain-growing areas where we have to move a crop?

Mr. EMMETT. Do I feel that the ICC has a role? Yes, sir.

Senator BURNS. Also, there is legislation now working its way through Congress due to an increased awareness of the environment, and we expect that the demand for western coal will be increased a little bit. Such coal that is found in the Powder River Basin both in Wyoming and Montana.

I would imagine that there are some people that think that if the railroads look at that, under the deregulation now, they might take a bigger bite out of moving that coal, out of the freight costs, to allow some of those companies to make money. It affects the tax base in the state of Montana. What role do you think the ICC should play in both of these events, should they take place?

In other words, I think we are going to be moving more coal.

Mr. EMMETT. In those situations where you do not have a captive shipper, the ICC role will be very limited. If you do have a circumstance where there is a captive shipper, then the ICC role will be much more involved and much more specific in determining rate reasonableness. And I think that those are all going to go on a case-by-case basis.

Senator BURNS. I think you are a pleasant breath of fresh air to the Commission, and I aim to support you.

By the way, when you were involved in the Texas situation, were there any conflicts between Texas state policy and federal policy that came from your experience down there that would hinder movement or efficiency of transportation both for this country and Texas?

Mr. EMMETT. There is a case that is pending in the courts right now over the definition of what is interstate commerce, the Armstrong Carpet case. But other than that, I am not aware of any specifics. And that was started years ago.

Senator BURNS. Are you familiar with the McCarthy Farms case in Montana?

Mr. EMMETT. No, sir.

Senator BURNS. Okay. Well, I would like to visit with you on that at a later date if possible.

Mr. Chairman, I thank you, and good luck to you.

Mr. EMMETT. Thank you, Senator.

Senator EXON. Senator Burns, thank you very much. I have a few additional questions for you, Mr. Emmett.

First, let me ask you a question that I assume you have been mulling over in your mind. What is your intention if confirmed with regard to a immediate participation in the votes of the Interstate Commerce Commission? Do you intend to be involved in all of them immediately and if not, why not?

I cite for example, do you plan to vote on the case in which you had not previously participated but which is on appeal?

Mr. EMMETT. Senator, my intent as of yesterday in talking with the current chairman of the ICC was, assuming confirmation, that I could be sworn in either next Tuesday afternoon or Wednesday, physically going to the office Monday after Thanksgiving and begin participating fully at that time.

And so in terms of cases that are on appeal, if they come back to the ICC, yes, sir, I intend to participate.

Senator EXON. You have heard several statements and several questions about the Staggers Rail Act. I just wanted to give you a chance to express your feelings on this to the committee once again and possibly in any words that you want to choose to answer this question. Certainly you know that the ICC's implementation of the Staggers Act has been highly controversial—generally speaking now, because I think I speak for all of the members of this subcommittee in saying that we do not expect nor do we want members of the ICC who do not make up their own minds, and we are not going to be trying to tell you what to do. However, I think it is fair to say that all of us would hope that you would be seeking a balanced position on all of these matters, more balanced than we think the ICC has previously given to them.

What balancing do you feel Congress intended in the Staggers Act insofar as shippers' interests and carrier revenue needs are concerned? That has to be a balancing act that I would just like to know a little bit more and give you a chance to expound on your philosophy in this regard.

Mr. EMMETT. Clearly the Staggers Act was intended to be a deregulatory move. Among those of us who favor deregulation of one degree or another, I would put myself in the category of those who want to see that deregulation works.

If you have a situation where there is no free market, where there is no competition, clearly you cannot just deregulate and have no regulation. Deregulation to me has never meant the total absence of regulation. It has meant a lessening of regulation. For example, in the state of Texas there will always be a need in transportation to protect the public interest, to make sure that we have a stable transportation system in this country.

So, that is kind of my general philosophical viewpoint.

Senator EXON. Do you believe—to press you a little further on this—do you believe that the ICC has the authority and the responsibility to act on its own initiative to prevent alleged railroad abuses when they come to the attention of the commission?

Mr. EMMETT. I would hate to give you a blanket answer for all cases, but I think that there certainly are cases where the ICC can act to prevent—I believe the language in the statute is that it can act to prevent anticompetitive behavior as well as to correct it.

Senator EXON. Mr. Emmett, I am sure that with your past background and experience in this area, you have had a chance to view the ICC procedures in the past insofar as they impact the ability of the small shipper to gain a fair hearing before the commission.

Do you think that the small shipper has had the access that he or she is entitled to in front of the commission and if not, are you pledged to see if the ICC, if you were added to it, does a better job than it has in this area in the past?

Mr. EMMETT. Since I have not been there, Mr. Chairman, I cannot comment on the access that they have had, but I pledge to making it open to the small shipper, absolutely.

Do I think that it will do a better job once I am there? I guess my ego makes me say "sure, it will be a better place once I am there."

Senator EXON. We hope so.

Following up on a question that Senator Burns had asked a little bit earlier and to feel you out on this a little bit more, do you have any views as of now on the ICC's role in ensuring an adequate supply and apportionment of hopper cars used to carry grain, which is a critical, critical thing for many of us who serve on this committee?

Mr. **Emmett**. I think the ICC definitely has a role in that. The specifics of that role I'm not sure of right now but, yes, we do have a role.

Senator **Exon**. Let us ask at least one question about railroad labor concerns which you are going to be faced with from time to time. Do you believe that the commission should play any role in rail labor relations? How have you reviewed the recent court challenges, the tensions that exist between the provisions of the Interstate Commerce Act and the Railway Labor Act. Are you familiar with those?

Mr. **Emmett**. I am. I was hoping the Supreme Court would be more definitive. They seem to have raised more questions than they have given us answers.

In my view that matter will inextricably work its way back through the courts again, and I am anxiously awaiting some clear guidelines as to what the ICC's role is. There is a clear conflict between the Interstate Commerce Act and the Railway Labor Act, and that is to be resolved in the courts.

Senator **Exon**. Are you saying that it should be resolved in the courts and you will await the court's decision rather than the commission playing a more active role in labor relations?

Mr. **Emmett**. That would certainly be my preference.

Senator **Exon**. The last question I have is with regard to revenue adequacy which comes up time and time again in the central part of most of the decisions you make in the ICC. What role do you believe the ICC's revenue adequacy determination plays in assessing the health of the overall railroad industry?

Mr. **Emmett**. Clearly it plays a large role, Mr. Chairman, but there has been a great deal of confusion in the public's mind and in my own mind when we say the railroad industry has been revitalized and it is healthy and we are given a lot of statistics.

Then, on the other hand, we say, "but none of them are revenue adequate yet." It creates a confusing situation, and I hope that once I am there and can look into the details of the economics, I will be less confused myself.

Senator **Exon**. Thank you, Mr. Emmett. I have no further questions I do not believe.

Senator Kasten.

Senator **Kasten**. Mr. Chairman, I have no questions.

Senator **Exon**. Senator Rockefeller, I believe you had some additional questions. We are pleased to recognize you now.

Senator **Rockefeller**. Just a few, Mr. Chairman, I promise. The one that has always troubled me, when we were having rate reasonableness hearings on the ICC, I tried to get a witness who was a small shipper from West Virginia to come and testify as to his real problems which were very real. I called the President of the West Virginia Coal Association. I could not get anybody, Mr. Emmett, to come up because they were afraid of railroad retribution, which is very real in the coal fields.

I finally did get somebody who lived in Virginia and mines coal in West Virginia to come up, and the first question I had to give him was to say were you afraid to come. He answered yes. We had rehearsed it, and then my next question was were you afraid to come because of railroad retribution. He said yes, and that was sort of my pledge to him was that I would try to indemnify him by putting it on the record.

The ICC does not cover that, but I want you to know about that, and that at least in the part of the country where I come from that railroad retribution is real just as, in fact, the Interstate Commerce Commission has usually made their most critical decisions, particularly those that are favorable, on the day or the day or two prior to either a House or a Senate hearing on the subject. If confirmed you will be in a position to do something about this, and I would hope you would be aware and sensitive as to the meaning of the first; i.e., rate reasonableness, and as to the hypocrisy in a sense of the second. This is just a statement.

Chairman Exon was referring to the revenue adequacy test. The SEC and shareholder documents reveal very different stories as to the revenue adequacy of railroads as compared to what the ICC test shows; to wit: SEC shareholder documents show that the railroads are doing very well, and ICC revenue adequacy tests show that they are revenue inadequate, and I have joked from time to time that they would probably be able to prove me revenue inadequate.

Are you aware of this dilemma and would you be willing to say that you think that SEC and shareholder documents should be considered in the determination of revenue adequacy tests by the Interstate Commerce Commission?

Mr. Emmett. Senator, I am very aware of the dilemma. I have shared some of that confusion. The specifics of what is legally put into the revenue adequacy determination I am not at all sure of at this time. It is something I want to check into. If it is legal, then I think the ICC should be able to consider all manner of items to make that determination. But like I say, I think there are some limitations in the statute as to what can go into that.

Senator Rockefeller. My final question is along the lines of the Chairman's. It is on the question of balance. I agreed completely with your statement in which you said that where competition exists, deregulation ought to rule and where competition does not exist, the ICC has a role. And that is the first time I have ever really heard that straight out from an ICC commissioner and I relate to it, and I thank you for that.

So my final question would be, do you not agree that the ICC does have to afford small shippers, as well as to railroads, a presumption of balance in the making of policy and that you would, if confirmed, exercise that degree of balance?

Mr. Emmett. Yes, Senator. Under the current statute we clearly are directed to maintain that balance.

Senator Rockefeller. I understand that, but the Chairman's and my problem have been that that balance, we feel, has not necessarily been exercised, and so I am asking for your——

Mr. Emmett. I guess I assumed that I was also picking up on my earlier statement that I view my job as implementing the statutes that are there at this time.

Senator Rockefeller. Thank you, Mr. Chairman, very much and thank you, Mr. Emmett.

Mr. Emmett. Thank you, Senator.

Senator Exon. Thank you, Senator Rockefeller.

Senator Burns, I will recognize you now. I just looked at any schedule and I see that we are five minutes past time for the conclusion of this. There is another confirmation hearing that is supposed to take place here when we conclude this one. So, we will try to wrap up as quickly as we can.

Senator Burns, do you have further questions?

Senator BURNS. I just have a couple of questions. I might submit those for the record and just for the record, and I will get a response from Mr. Emmett. They are questions that have to do with some policy on captive shippers and this type of thing, and I think we have already discussed part of that. So, I thank you. If there had been five more minutes left in the Missouri and Nebraska game one time, we would have won that rascal. Thank you very much.

Senator EXON. Strike that last remark.

Senator Kasten.

Senator KASTEN. I just would like to inquire of my friend from Montana, would it be all right with you if the questions that you submit are answered sometime in the next few days?

Senator BURNS. That is exactly right.

Senator KASTEN. I do not want a record that remains open to become a problem for a 5:30 vote this afternoon if the Chairman is still hoping to do that.

Senator EXON. Let me answer that question in this fashion. I would declare now that there may be some additional questions. I know that Senator Gore has some questions that we will ask be mailed to you and put in the record at some later time.

I would hope that we could all agree that those who could not be here because they have conflicting assignments today, that any such questions would not hold up any consideration of the nomination of Mr. Emmett as has been properly brought up by Senator Kasten.

I would certainly say that I will be supporting you, Mr. Emmett, for this nomination, and I would assure all that we will move ahead on this as expeditiously as we might.

Any further comments?

Senator ROCKEFELLER. Mr. Chairman, only to say that I agree with you that I look forward to supporting the nomination of Mr. Emmett.

Senator KASTEN. Mr. Chairman, I thank you very much for that clarification, and I hope very much that we can then move forward and have a quorum at 5:30. I will do my best to produce our side, and we will be able, I hope, to confirm Mr. Emmett, which will then make it possible for him to begin to serve a term that he has waited for since June. It is not your fault and it certainly is not the Chairman's fault, but that is just a fact. And now we want to move forward.

Mr. Chairman, thank you very much.

Senator EXON. Thank you. I am not aware of any definite time set for this consideration, but I would emphasize again that I will do everything that I can to move it along as quickly as possible. Thank you, Mr. Emmett, and we are adjourned.

[Whereupon, at 3:09 p.m., the committee adjourned, subject to the call of the Chair.]

[The following information was subsequently received for the record:]

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Questions for the Record Addressed to Mr. Edward Emmett
Interstate Commerce Commission

1. Administrative Deregulation

When this Congress enacted the Motor Carrier Act of 1980, it expressly retained the backbone of carrier regulation, the "Filed Rate Doctrine". In addition, the report language of the 1980 Act read, "the Commission is admonished to stay within the powers specifically vested in it by the revised law."

Notwithstanding this, the current Interstate Commerce Commission has declared that it has the authority to allow carriers and shippers to negotiate private rate deals irrespective of the filed tariffs.

Do you share the views of the current Commission on its obligation with respect to this statute?

2. Predatory Practices

Some of my constituents have suggested to me that the current transportation environment is causing a rapid consolidation of freight hauling into the hands of a few industry giants, leading ultimately to the demise of competitiveness in the industry.

Do you believe that the proper role of the Commission is to guide the direction of the transportation industry, and if so, do you agree with the current Commission on the best direction in which to aim.

3. Discriminatory Pricing

It has also been suggested to me that high-volume customers now routinely get discounts of fifty percent or more below the rates paid by smaller shippers.

Is this accurate, to your knowledge?
Do you believe this is appropriate?

4. Invasion of Authority of Bankruptcy Courts

Last June 29, the Interstate Commerce Commission asserted that its decisions in undercharge claims are "binding" and "subject to judicial review only to determine that they are not arbitrary or capricious." Further, the commission declared that it "will now entertain unreasonable practice claims without waiting for court referral."

Since that time the Commission has begun granting petitions against bankrupt carriers without permission from the presiding bankruptcy courts.

Is it your opinion that the Interstate Commerce Commission should be exempt from the automatic stay of proceedings specified in the U.S. Bankruptcy Code?

5. According to the ICC's own Annual Reports for 1980 through 1988, the Commission received a total of 1712 applications for abandonment of rail lines and denied just 28 of them. (135 of the applications were dismissed for procedural reasons, 21 were dismissed because the line was sold, and the rest -- 1481 -- were granted.) Out of a total of 27,850 miles of track included in these applications, the Commission denied abandonment for just 1052 miles.

Second, under the Commission's abandonment exemption procedures, 672 applications for another 6645 miles were filed in 1980 through 1988, and the ICC denied just 39 applications covering 472.5 miles.

Would you comment on these figures for the Committee? In particular, do you think that this record shows that the Commission has been diligent in considering the public interest when it reviews these abandonment applications from the railroads?

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4. **As you know, the CPSC is structured as a collegial body. Some have suggested that management by a single administrator would be preferable to the current structure. What, in you view, is the most effective structure for the CPSC?**

Congress established the Consumer Product Safety Commission as an independent enforcement agency, and structured it as a collegial body consisting of Commissioners from diverse political parties and backgrounds, serving in staggered terms. Having not served at the Commission, I can not say whether I believe this structure would be preferable to a single Administrator, or the most effective. However, I believe there are several advantages to the current structure of the Consumer Product Safety Commission. First, I believe that a collegial body facilitates an examination of issues from diverse viewpoints and allows for a full discussion of issues and, perhaps, a more comprehensive examination of issues. Second, a collegial body, composed of Commissioners from different political parties, fosters a greater enforcement independence. This is especially true with Commissioners who serve in staggered terms over different administrations.

5. **The Consumer Product Safety Act provides for a five member Commission, although in recent years only three Commissioners have been funded. What is your opinion of the effect of this reduction in the number of Commissioners on the functioning of the Commission? Do you believe a five member Commission is preferable to a three member body?**

Having not served on the Commission I am not able to evaluate the effect of the reduction in the number of Commissioners from five to three on the functioning of the Commission. I would estimate that a five member Commission would result in greater diversity on the Commission than a three member Commission, because of the addition of two individuals. However, I have no opinion as to whether a five member Commission is preferable to a three member body.

6. **As you may know, under the previous CPSC Chairman, there were suggestions that the ability of the Agency to carry out its mission was adversely affected by a lack of collegiality between the Chairman and the other Commissioners. How do you intend to insure that the CPSC functions effectively as a collegial body?**

Having not served on the Commission, I am not able to comment on the effectiveness of the Commission under the

EDWARD M. EMMETT ANSWERS TO SENATOR GORE'S QUESTIONS:

1. The issue of "negotiated rates" versus "filed rates" has arisen largely in cases of motor carrier bankruptcies. After the fact, auditing firms have found "undercharges" and have tried to collect them from the shippers involved. I believe there are two approaches to this complex, emotional issue. One is common sense and the other is legalistic.

   Common sense, I believe, is on the side of the shipper. Assume that I offer to sell you a service at a certain price and you accept my offer. If I went bankrupt a year later and suddenly an auditor showed up on your doorstep demanding additional payment for the service I rendered, you would probably be outraged. That is the situation in which shippers find themselves.

   Common sense, though, does not always yield the same result as a legalistic approach. The ICC's claim of primary jurisdiction in this issue has been challenged in court many times and has been upheld by four different U. S. Courts of Appeals (Second, Seventh, Eighth and Eleventh Circuits). Only the Fifth Circuit has ruled against the ICC. Hopefully, the U. S. Supreme Court will provide a definitive answer in the near future. In the meantime, I intend to support the current approach, since it strikes me as fair and has been upheld by four U. S. Courts of Appeals.

2. Since the Motor Carrier Act of 1980 took effect, there has been a period of transition in the motor carrier industry. For truckload shipments, the number of carriers has increased dramatically. There has been a degree of overall concentration in less-than-truckload (LTL) traffic. However, in the vast majority of markets, there is more LTL competition today than there was prior to enactment of the Motor Carrier Act. I believe the ICC should monitor the condition of the transportation industry and alert Congress to potential problems which might require legislative attention.

3. There is no question that large shippers are receiving discounts from motor carriers. In addition, truckload rates are less than LTL rates. Volume discounts, though, have always been an integral part of the free enterprise system. Since being nominated for a position on the ICC, I have met with several organizations which represent small shippers and none of them have expressed concern over this issue. In fact, small shippers seem to be generally satisfied with motor carrier deregulation.

4. As I stated in my answer to your first question, the ICC has been upheld in its approach to the "undercharge" issue by four separate U. S. Circuit Courts of Appeals. Specifically, these courts have ruled that the ICC, not bankruptcy courts, has primary jurisdiction in "undercharge" cases. Unless the Supreme Court overrules them, I must assume that these Circuit Courts have correctly interpreted applicable law.

5. I have some concerns about abandonments being made for convenience sake and not being in the best interest of the overall transportation system. That concern will be reflected in my approach to future abandonments.

Question for Edward M. Emmett, Nominee for the ICC
Senate Commerce Committee
November 16, 1989
Submitted by Senator Conrad Burns

1. Mr. Emmett, at times during the 1980s the Administration has recommended that the ICC be abolished, and that railroad regulation be administered by the Federal Railroad Administration, with antitrust matters brought to the Department of Justice. What is your view as to the necessity of continuing the ICC for the purpose of administering railroad regulation? How do you briefly see the role of the ICC in matters that deal with relationships among rail carriers, and on issues involving rail carriers and shippers? The Interstate Commerce Act has established the ICC as an independent regulatory body; is the notion of having the agency responsible for transportation regulation in the U.S. be an independent body still meritorious?

2. Mr. Emmett, we realize that a basic difference exists with regard to modes of transportation in that trucks operate on public roads, barge lines operate on public waterways, and airlines operate in public space, yet railroads operate on privately owned trackage. With that in mind, we know that truckers must compete for highway freight, barge lines must compete for water carrier freight, and airlines must compete for airline services, since each of those modes utilize public facilities open to all legitimate carriers. Yet a railroad does not have to compete with another railroad since, in most cases, its trackage is uniquely open only to the owning rail carrier. Therefore, rail shippers located on specific trackage have no option to the owner-railroad for rail services. What do you believe is critical for the ICC to bear in mind with respect to railroad transportation in the public interest, knowing that shippers of essential commodities often have no economic and practical alternative to the use of a single rail carrier to move selected commodities, particularly grain, coal, and chemicals?

Interstate Commerce Commission
Washington, D.C. 20423

December 7, 1989

The Honorable Conrad M. Burns
United States Senate
Washington, DC 20510

Dear Senator Burns:

I am pleased to submit the following answers to the two written questions you gave to me at my hearing.

1. This question basically seeks my broad, philosophical view of the role of ICC in regulating railroads and my opinion of the status of the ICC as an independent agency.

As I stated at the hearing, I believe the deregulatory approach of the Staggers Act saved the American railroad industry from financial ruin. I also believe that the very nature of the private railroad system, with some shippers served by a single rail carrier, creates the potential for shipper abuse. To be sure that such potential does not become a reality, which damages the economic fabric of a particular area, a dispute resolution process must be readily available. The ICC currently serves that purpose and, in that regard, being an independent agency is helpful.

2. The basic premise of this question is that railroads are different from other modes of transportation since they operate on privately owned tracks whereas trucks, barges and airlines operate on public rights of way and facilities. In instances where a shipper has no options other than using a single railroad, I view the ICC as the protector of the public interest. In a broader sense, though, the premise of this question also raises a basic transportation pricing question which must be addressed by Congress, the administration, and several regulatory agencies. How do we arrive at equitable comparisons between competing transportation modes when one is privately funded and the competition is heavily subsidized by the taxpayer? I can only promise to strive for fairness in such questions.

I look forward to working closely with you and your staff to address these and other issues.

Best regards,

Ed Emmett

Edward M.
Commissi

NOMINATION—NOVEMBER

THURSDAY, NOVEMBER 16, 1988

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 3:15 p.m., in room SR-253, Russell Senate Office Building, Hon. Richard Bryan presiding.

Staff members assigned to this hearing: Linda Lance, staff counsel; Becky Kojm, professional staff member; and Ruth Johnson, minority professional stafff member

OPENING STATEMENT BY SENATOR BRYAN

Senator BRYAN. I would like to take this opportunity to welcome all of you in attendance at the hearing on the nomination of Jacqueline Jones-Smith to be commissioner and Chairman of the Consumer Product Safety Commission. As Chairman of the Consumer Subcommittee, I have spent a considerable amount of time earlier this year, as have the members of our subcommittee, on issues related to the Consumer Product Safety Commission and was pleased and gratified that legislation which was introduced earlier this year to reauthorize the agency has now passed the Senate.

In the course of the year, I have become increasingly aware of the important mission of the CPSC, and of some of its problems. The most obvious difficulty for CPSC for most of this year has been the lack of a quorum necessary to conduct and transact its business. Three commissioners constitute a quorum and only two commissioners have been in place since the resignation of former chairman Scanlon. For that reason I am particularly pleased that the President has forwarded the nomination of Jacqueline Jones-Smith to the United States Senate.

I believe that the chairmanship of the CPSC can be both a challenging and a rewarding position. The rewards are obviously, everything from toy safety to indoor air quality to all terrain vehicles is the responsibility of this agency. All Americans, children and adults, are CPSC's constituency, and its efforts can quite literally save lives and alleviate pain and suffering.

However, this agency has in the recent past suffered from reduced funding, internal conflict and a lack of direction. Most recently it has been unable even to transact business due to a lack of quorum. Morale has suffered as a consequence.

The new chairman will have a challenging role in getting the agency moving again, and I look forward to discussing these issues this afternoon with the nominee. We will be joined rather shortly by the Majority Whip from the House, Congressman Bill Gray, and we are already pleased to have with us this morning Representative Bentley from the state of Maryland, and I call upon her first to offer her comments.

STATEMENT OF HON. HELEN DELICH BENTLEY, U.S. REPRESENTATIVE FROM MARYLAND

Ms. **Bentley**. Thank you, Mr. Chairman. Although today I am the senior elected official in the Republican Party of the state of Maryland, Mr. Chairman, Nevada is my native state, as you know.

Senator **Bryan**. I do know that.

Ms. **Bentley**. And it is in my capacity from Maryland that it is my great privilege to introduce to you today Ms. Jacqueline Jones-Smith of Rockville, Maryland, who is President Bush's nominee for Chairman of the Consumer Product Safety Commission and also as a commissioner.

And I am particularly pleased, Mr. Chairman, to be introducing here, a very competent woman, to head up this very important regulatory agency since I was the first woman ever nominated and selected by a President to head up a regulatory agency some 20 years ago to run the Federal Maritime Commission. So, I am looking forward to a great stewardship by Ms. Jones-Smith.

Since 1987 Ms. Jones-Smith has served as staff attorney in the office of the General Counsel of the Federal Election Commission, and in this capacity she litigates cases on behalf of the commission in the United States appellate courts. Of course, this also gives her experience in the regulatory field.

And prior to assuming this position Ms. Jones-Smith served as Assistant County Attorney for Montgomery County, Maryland, where in addition to other duties she prosecuted civil infractions in the areas of health, public safety, and environmental protection, all of which will give her an excellent background for her work in the consumer field.

Prior to earning her law degree from American University in 1984, Ms. Jones-Smith worked in the library and information science field holding numerous positions of responsibility. She earned her bachelor's degree in 1974 from Swarthmore College, her master's in 1978 from Syracuse University, and in 1984 her juris doctor from American University.

Ms. Jones-Smith is admitted to practice before numerous courts, including the United States Supreme Court. She is a member of the American Bar Association, the National Bar Association, and the Maryland State Bar Association.

And I would be remiss, Mr. Chairman, if I did not mention the fact that Jackie and her wonderful husband, Joshua Smith, have been very good friends of mine for a number of years. I truly can recommend Jackie as someone who will take on this position of great responsibility and serve as a credit to the administration and the nation. And it is with great admiration and my highest regards that I present to you with affection Jacqueline Jones-Smith.

Senator **Bryan**. We appreciate very much your testimony and your comments on behalf of the nominee, and I note that we have been joined by Congressman Bill Gray, the Majority Whip, and we are delighted to have you here as well this morning.

STATEMENT OF HON. WILLIAM GRAY, U.S. REPRESENTATIVE FROM PENNSYLVANIA

Mr. **Gray**. Thank you very much, Mr. Chairman. Members of this committee, I am delighted to come and introduce for your confirmation to a seven-year term as Commissioner and Chair of the Consumer Product Safety Commission, Ms. Jacqueline Jones-Smith. She hails from the second congressional district in Pennsylvania, near the great city of Philadelphia, city of brother love and sisterly effectiveness, where she grew up and attended the public schools.

Ms. Jones-Smith brings more than ten years of legal and management experience to this position. Since 1987 Ms. Jones-Smith has served as a staff attorney in the Federal Election Commission's office of the General Counsel. From 1985 to 1987 she served as an Assistant County Attorney for Montgomery County, Maryland, where among her responsibilities she prosecuted civil infractions in the areas of health, public safety, and environmental protection and represented the Department of Social Services in child neglect and abuse cases.

Prior to that term she worked in a number of progressively, responsible position including a six-year tenure with the MAXIMA Corporation, where she developed a substantial business base worth several millions of dollars and managed staff in project sites throughout the United States.

Ms. Jones-Smith received her juris doctorate from American University and is admitted to practice law before the U.S. Supreme Court, and the U.S. Court of Appeals for the District of Columbia and the Ninth Circuit, the U.S. District Court and the Court of Appeals of Maryland. She is a member of the American Bar Association, the National Bar Association, and the Maryland State Bar Association. She is eminently qualified to serve in this position. I am delighted to come as her former hometown congressperson to join in this bipartisan recommendation that this committee in all swiftness confirm her for Commissioner and Chair of the Consumer Product Safety Commission.

Senator **Bryan**. I thank you very much as do all members of the committee for your endorsements and your comments. The bipartisan support is evident. For the record, I might indicate that we expect to have a mark-up on this nomination later on this afternoon.

I recognize, that both of you have very busy schedules and if you do need to excuse yourselves, we certainly understand and the nominee understands that no disrespect is intended in light of some very pressing business that both of you I know have at the other end of the hall.

Mr. **Gray**. Thank you very much, Mr. Chairman.

Senator **Bryan**. Thank you both very much for your testimony. Well, after those ringing endorsements, it does not get much better around here, Ms. Jones-Smith. I do not know whether we should stop at this point, but we certainly want to hear from you. Let me tender the floor to you now for your comments.

[The biographical sketch and questions and answers follow:]

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN

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United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510–6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Jones-Smith (Last) Jacqueline (First) (Other)

Address: 5816 Tudor Lane
Rockville, Maryland 20852
(Current residence)

999 E Street, N.W.
Washington, D.C. 20463
(Business)

2. Position to which nominated: Commissioner and Chairman

Date of nomination: October 11, 1989

3. Date of birth: November (month) 5 (day) 1952 (year)

Place of birth: Bronx, New York City, N.Y.

4. Marital status: Married

Full name of Spouse: Joshua Isaac Smith

5. Names and ages of children: Joshua Isaac Smith, II, 24 (stepson)

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
American University	9/81-6/84	J.D.	6/84
Syracuse University	9/76-12/77	M.L.S.	8/78
Swarthmore College	9/70-6/74	B.A.	6/74

Jacqueline Jones-Smith

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
6/87	Present	Federal Election Commission	999 E Street, N.W. Wash., D.C. 20463	Staff Attorney, Office of the General Counsel
3/85	5/87	Montgomery County, Office of the County Attorney	101 Monroe Street Rockville, MD 20850	Assistant County Attorne
10/84	3/85	The MAXIMA Corporation	2101 East Jefferson Street, Rockville, Maryland 20850	Division Director
5/82	10/84	"	"	Senior Library Systems Consultant
/80	6/81	"	"	Director Library/Clearin house Operations
10/79	/80	"	"	Systems Librarian
8/78	5/79	Biosciences Information Service	2100 Arch Street Philadelphia, PA 19103	Systems Analyst
4/78	7/78	Free Library of Philadelphia	Philadelphia, PA	Librarian
8/76	12/77	Syracuse University, School of Information Studies	113 Euclid Street Syracuse, N.Y. 13210	Graduate Assistant
10/74	7/76	West Chester State College	West Chester, PA 19380	Supervised student dormitory activities; counseled students

Jacqueline Jones-Smith

8. Government experience — List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

FEDERAL:

Federal Election Commission - Staff Attorney, Office of the General Counsel, 1987 to Present

The MAXIMA Corporation - Various positions from 1979-1985. MAXIMA, an integrated information services company, provides services to clients throughout the United States including agencies of the U.S. government.

STATE:

Maryland: Circuit Court for Montgomery County, Maryland - Judicial Intern for the Honorable Rosalyn Bell (part-time, non-paid)

Pennsylvania: West Chester State College, West Chester, PA - Supervised and counseled dormitory residents

LOCAL:

Montgomery County, Maryland: Office of the County Attorney - Assistant County Attorney, 1985-1987

Philadelphia, Pennsylvania:

Free Library of Philadelphia - Librarian, 1978

Department of Recreation - Recreation Supervisor, 1972

PRE-HEARING QUESTIONS OF THE MAJORITY
FOR JACQUELINE JONES-SMITH
NOMINEE FOR CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION

1. **What is your general philosophy about the proper role of Federal regulation of business? Include in your answer a discussion of the role you believe the free market should play in insuring the health and safety of the consumer, and describe the appropriate role of regulators like the CPSC in resolving conflicts between consumers and industry?**

I believe that the proper role of Federal agencies charged by Congress with the regulation and enforcement of Federal statutes is to enforce the law Congress has entrusted to them. As a result, I believe that the proper role of Federal regulation of business is that which is defined in the particular statute.

I firmly believe that the public should not be subject to unreasonable risks of injury associated with consumer products. The operation of the free market does, to an extent, result in the protection of consumers from unreasonable risks of injury because the exercise of consumer preference may include some evaluation of product risk. However, the free market alone is not enough in providing protection for all American consumers from unreasonable risks of injury associated with consumer products, and providing regulation which is national in scope. I believe the Consumer Product Safety Commission serves an important national function. The appropriate role of the Consumer Product Safety Commission in protecting consumers from unreasonable risks of injury associated with consumer products is defined in the product safety statutes the Commission administers.

2. **What, in your opinion, is the proper working relationship between the Commission and Congress? Include in your answer a statement of your views on the Commission's providing information, including information regarding internal deliberations, to Congress for use in connection with Congress' oversight responsibilities.**

I believe the Consumer Product Safety Commission and Congress have distinct roles in protecting consumers from unreasonable risks associated with consumer products. Congress promulgates the product safety statutes and the Commission enforces these statutes. Therefore, a cooperative working relationship between Congress and the Commission is important. Part of this working relationship is the sharing of information with Congress as stated in 15 U.S.C. § 2055 (a)(7). Having not served on the Commission, I have not seen the application of this provision, therefore, I have not formed any views regarding it. Notwithstanding, I recognize the fact that the sharing of confidential information with Congress in accordance with the statute is necessary to achieve important product safety goals.

3. **As you know, the CPSC has been without a quorum for almost a year, and unable to transact business. What is your understanding of the effect this situation has had on the Commission's ability to carry out its responsibilities to protect consumer safety and on the morale of the staff? What are your priorities for addressing the pending business of the agency if you are confirmed?**

The statute requires a quorum of three Commissioners for Commission decisions. Therefore, the lack of a quorum significantly hampers the Commission's ability to carry out its statutory mandate. However, having not served at the Commission, I am unable to state specifically how the lack of a quorum has effected the Commission's ability to protect consumers from unreasonable risks of injury associated with consumer products. I am sensitive to the fact that staff morale can be affected by the lack of a quorum. If morale is directly attributable to the lack of a quorum, my presence at the Commission, if confirmed, should encourage morale. I am encouraged by the positive attitudes I have encountered from my limited contacts with the staff thus far.

If I am confirmed, my objective is to see that the Consumer Product Safety Commission carries out its statutory mission and enforces the product safety laws. Having not served on the Commission I have not had an opportunity to evaluate the issues and other business that are pending before the Commission. To establish priorities before I am able to evaluate and assess the issues and the operation would be premature. My experiences in management have taught me that priorities are established through an evaluation and assessment of the operation. Such an assessment would include, inter alia, a review of issues in light of any statutory deadlines, discussions with staff in the major operational areas, a review of prior objectives and achievements and an evaluation of current resources.

previous Chairman. I believe the addition of a new person in any group changes the dynamics of that group. If I am confirmed, my addition to the Commission will provide a fresh start for the Commission. If confirmed, I will encourage open discussion of the issues and attempt to find areas of agreement. I also hope to encourage a healthy respect for Commissioner differences which is the basis of a collegial body.

7. **Please describe any issues related to consumer product safety that are of particular interest or concern to you, and describe any issues you have handled in your professional career that relate to consumer health and safety.**

My goal is to see that the Commission enforce the product safety laws. I have no particular agenda with regard to specific issues or products. However, as the Christmas season approaches I am well aware - as I'm sure we all are - of the potential dangers that may arise with regard to children's playthings. It is during this season that the potential for serious injury can occur to children, a most vulnerable population.

My work as an Assistant County Attorney in representing the Department of Social Services in child neglect and abuse cases has heightened my sensitivity to the need to protect children from unreasonable risks associated with consumer products. In addition, as Assistant County Attorney, I prosecuted civil infractions in health and public safety which included laws involving fire safety, housing codes, fireworks and environmental standards.

STATEMENT OF JACQUELINE JONES-SMITH

Ms. JONES-SMITH. Thank you, Mr. Chairman. First I would like to thank, wholeheartedly, Congressman Bill Gray, from my home state of Pennsylvania, and Congresswoman Helen Bentley from my adopted state of Maryland, for taking time out of their busy schedules to be here with me and for their generous support of my nomination.

Mr. Chairman, it is truly an honor to appear before you today as the nominee of the President of the United States to the Consumer Product Safety Commission as a Commissioner and as Chairman. I am sincerely grateful to the President for nominating me to serve our country in this important position. The Consumer Product Safety Commission has a vitally important mission in protecting American consumers from unreasonable risks of injury associated with consumer products. If confirmed, I will devote my full energies to furthering the mission of the Consumer Product Safety Commission and to fulfilling the trust of the President, the Congress and the American public.

I firmly believe that my legal and management background provides me with the balance necessary to administer the law as a commissioner and to exercise the executive functions as Chairman. My legal experience demonstrates my commitment to civil enforcement at the federal and local government levels. Currently I am defending administrative decisions in the United States appellate courts as a staff attorney for the Federal Election Commission which, like the Consumer Product Safety Commission is an independent agency charged with the regulation and enforcement of a federal statute.

Moreover, as Assistant County Attorney for Montgomery County, Maryland, I prosecuted civil infractions in health and public safety which included laws involving fire safety, housing codes, environmental codes and fireworks. In addition, in representing the Department of Social Services in child neglect and abuse cases, I worked to ensure the safety and well-being of children—a population which the Consumer Product Safety Commission has taken significant steps to protect.

As a result of my civil enforcement experience, I firmly believe the Consumer Product Safety Commission has an important mission in protecting consumers from unreasonable risks of injury associated with consumer products. However, I am sensitive to the fact that an agency's administration of a federal enforcement statute affects not only the population that the statute is designed to protect, but also the population that is subject to enforcement. This is especially true with respect to the Consumer Product Safety Commission which has broad prosecutorial discretion under the statutes it administers. Commission determinations may impact not only the health and safety of consumers, but also the viability of businesses. Thus, I believe that the proper exercise of prosecutorial discretion requires that administrative determinations be based on an objective analysis of facts in light of the applicable law.

During my five-plus years with the MAXIMA Corporation, a Maryland-based information systems corporation, I developed a significant business base through library and information systems contracts worth several million dollars and managed a staff of more than 80 individuals in project sites across the United States. As a result of my experiences in helping to build a successful business—where responsiveness to the client and careful management of resources are key—I am well aware that management in an agency like the Consumer Product Safety Commission requires a similar vision.

However, responsiveness to the public and careful management of resources should not be management's vision alone. I believe that one of the most important resources an organization has is its staff. The Consumer Product Safety Commission operates a main office in the Washington, D.C. area and several regional offices across the country. The public's perception of the Commission is based, in significant part, on its contacts with Commission staff. Therefore, effective public contacts require responsive and motivated personnel. I firmly believe that management's communication and coordination with staff is vitally important.

My goal for the Consumer Product Safety Commission, if confirmed, is reflective of my legal and management beliefs. That goal is to see that the Consumer Product Safety Commission carries out its statutory mission and enforces the products safety laws.

The Consumer Product Safety Commission, in operating without a quorum for almost ten months, has gone through one of the most difficult periods in its history. Yet, despite this difficulty, it has continued to function. I am encouraged by the positive attitudes I have encountered from my limited contacts with the staff, who appear to remain dedicated and committed. I look forward to working with the staff as well as with my fellow Commissioners.

I welcome any questions, Mr. Chairman, that you may have and again, I thank you for your consideration.

Senator BRYAN. Thank you for your testimony. We had the occasion the other day to visit at some length in the office, as I am sure you will recall. Let me just make sure that we have some of those things that we talked about as part of the committee record for this proceeding.

I, as I told you, was impressed with your background as a litigator bringing a legal perspective to the commission, which I think adds some strength to the commission, and I shared with you the hope and expectation that many if not all on the committee have that you will not hesitate where you think appropriate to be aggressive in pursuing a legal remedy.

I think all too often there is sometimes a reluctance that gee, we had better not pursue an action because we may lose it. If you are satisfied that a predicament exists for action to be taken, I would hope that you would not be timid in pursuing the action because you are more interested in the statistical game; that is, we have won 90 percent out of the petitions that we have taken to proceeding and that you would, in fact, pursue those things if there is a legal basis in your judgment and there's a public policy objective to be achieved that you would not hesitate to go forward.

And I give you a chance to respond as you did in my office the other day.

Ms. JONES-SMITH. Well, Senator, as we discussed yesterday, the determination of whether to pursue litigation depends on balancing a number of factors such as the specific facts and circumstances of a case, the objectives of the litigation, the specific issues involved, and the importance of the issues to the agency. I think there always has to be a careful analysis of these factors in determining whether to pursue litigation.

Other factors that must be examined include the availability of resources, and staff, and the chances of winning. Many factors, as you well know, Senator, as a former litigator, are considered in deciding whether to pursue a court case.

My decision whether to pursue litigation will be based on an objective analysis of these factors in light of the specific laws that are to be reviewed.

Senator BRYAN. Well, I certainly recognize that there is a balancing that must be a part of the judgmental process, but let me be more specific.

If you conclude that a case is meritorious, that there is a public policy objective to be achieved and someone says well, maybe our chances are not 60 or 70 percent and may be 50–50, but again, with the predicament that I have given you that there is a legal foundation for the case, that there is a public policy objective to be achieved consistent with the responsibilities that you are charged with in the act, would you have under those circumstances any hesitation to file that proceeding?

Ms. JONES-SMITH. Because of my background as a litigator I do not view litigation as a mysterious process. I believe litigation is a helpful way of resolving issues. I would not decide to pursue litigation merely for statistical purposes.

Senator BRYAN. I do not want to put words in your mouth, but you would file the action?

Ms. JONES-SMITH. If, in fact, all circumstances pointed to it, I would not have a problem pursuing an action.

Senator BRYAN. You would not because one of the lawyers on your staff said look, this is not a slam dunk; this is not one that I can tell you we are going to win, but I think it is a good case? You would not back off because of that reason?

Ms. JONES-SMITH. Not for that reason alone, Senator, if other considerations were more important in pursuing litigation.

Sometimes an agency has to pursue litigation for purposes other than winning. I am not afraid of pursuing litigation as long as the factors I previously mentioned are considered.

Senator BRYAN. You talked about the balancing, and it is certainly part of the responsibility that you have. In the past it has been the feeling of a good many of us that that balance all too frequently has weighed in favor of no action.

I would hope with the kind of background and experience and the youthful vitality that you have demonstrated that you can help to give this agency a sense of direction and to bring an energy level which it has lacked over the past few months in part in fairness because of the absence of a quorum. Do you feel that you can do that?

Ms. **Jones-Smith**. Senator, I am looking forward to working in this agency. I think there are some very positive aspects about the agency. One aspect is, from all indications, a committed staff.

Moreover, I think the issues are clearly important. Protecting consumers from unreasonable risks because of consumer products is clearly an important issue. I look forward to the challenge and, if I am confirmed, will devote my full energies to assuring that the Consumer Product Safety Commission enforces the statutes.

Senator **Bryan**. I am pleased to hear that. As the Chairman you set the tone. Your example is something that is not unmindful of those who are part of that staff that you have indicated. If you show the kind of energy and commitment and the sense of direction that I think the agency needs, the staff is going to sense that.

If they know the answer that you always want to hear is look, this is extremely complicated, we do not have the resources, we may not win it, let us drop it. If that is the kind of response that you appear to invite from them which unfortunately in most instances, it is the nature of the bureaucracy—and you know that because you have been involved in public service—that that is likely the kind of thing that you will get.

On the other hand, if the staff understands that they can present their views to you with absolute candor, that you encourage a variety of views within your own staff, some indicating you should charge forward, others saying look, maybe caution is the best approach—if they can express those views candidly to you, you are going to get the full capability of those staff resources such as you find them.

Ms. **Jones-Smith**. I agree, Senator. My management style is to fully examine an issue—the positives and negatives of an issue.

I am not someone who wants "yes" people. I want to hear the opinions of staff.

I may not accept the staff's recommendation.

Senator **Bryan**. I understand that.

Ms. **Jones-Smith**. However, I think decision-making is more effective if there is a full discussion of issues and alternatives prior to making a decision.

Senator **Bryan**. Well, I am pleased to hear that response.

Let me ask you, with your background as a litigator, what particular interest caused you to be interested in being the Chairman of the Consumer Product Safety Commission?

You have litigated and you have got a fine record and a background, but nothing per se that is involved in public safety such as we are talking about here? Is there something about this commission that you felt well, this gives you an opportunity to pursue interests which you have not previously been able to pursue because of your more limited role as counsel?

Ms. **Jones-Smith**. I would say my background does include work in public safety. As an Assistant County Attorney I prosecuted municipal infractions in public safety.

Senator **Bryan**. Okay.

Ms. **Jones-Smith**. However, my background reflects more than experience in litigation. My background includes experience in civil enforcement, both at the federal and local levels of government. My interest in civil enforcement and in defending agency determinations has resulted in my interest in the enforcement activities of the Consumer Product Safety Commission.

In fact, I think this position will combine a number of things, my experiences in public safety, my vast experience in civil enforcement, and also my management experience.

Senator BRYAN. Let us talk about that management experience for just a moment. It would be my presumption that there is a considerable backlog, and there probably are always more things that could be done than, recognizing the reality of your staff complement, what you can undertake.

Have you thought of how you are going to approach and develop your priorities, given that there may be a horrendous backlog of things that have not been attended to because of the administrative dilemma that the agency has found itself confronted with for the past 10 or 11 months?

How are you going to address and prioritize, and what are your thoughts in terms of working that backlog down to a reasonable level?

Ms. JONES-SMITH. My background as a manager has taught me that one important step in determining priorities is to fully assess the operation—what has to be done, what has been done and what are the resources. This requires an analysis that includes discussions with staff, review of past actions and an evaluation of resources.

After a full analysis of just where the agency is and where specific issues are in the administrative process a determination can be made, vis-a-vis the resources that are available, regarding the priorities for the agency.

Senator BRYAN. So you would invite staff who, because they have been there a good bit longer, to say, look, I think these are the major cases in the pipeline, these are the cases that have the greatest impact, in terms of public safety. And a given staff member would say to you, Madam Chairman, I think that our priorities ought to be this action, this action? You would invite that kind of candid response from your staff?

Ms. JONES-SMITH. To a certain extent.

Let me clarify my statement regarding staff input. Any staff member can provide a personal opinion as to what is important.

Senator BRYAN. Sure.

Ms. JONES-SMITH. This process involves more than eliciting the staff's personal opinion as to what is important for the agency. Discussions with staff, as I see it, will involve their reasoned assessment based on the facts and the data that they have before them.

Senator BRYAN. Sure.

Ms. JONES-SMITH. This process involves my asking staff to review objectives, look at the facts and data, and based on their experiences in this area, give me an assessment.

Senator BRYAN. No, I did not mean to presume or to imply in any way that you wanted a horseback opinion.

Clearly, when a staff makes a recommendation to you, you want to make sure that, number one, there is indeed a predicament, legally, upon which an action can be pursued, and to evaluate the public policy objective and the impact to be achieved. And presumably the staff would be considering that in making recommendations to you.

My question, more specifically is, with those assumptions built into the question, that you would invite a staff member's candid recommendation to you that, look, I think A, B, C, and D ought to be our priorities, recognizing fully that staff does not make that decision, but that the Commission does?

Ms. **JONES-SMITH**. True.

Senator **BRYAN**. And I do respect that.

Ms. **JONES-SMITH**. That is important, Senator.

The staff have been working in the system and they have been dealing with the issues and the business before the Commission. Their experiences and their knowledge are clearly valuable. Eliciting reasoned opinions from the staff is an important part of management.

To make decisions in a vacuum, without any kind of input from staff, can, at times, be disastrous.

Senator **BRYAN**. Well, I would like to wish you well in your new undertaking.

Let me give you an opportunity to respond to anything that you may not have had previous occasion to do, in light of our little colloquy here, or any additional statement you would like to make.

Ms. **JONES-SMITH**. I have no additional statement, Senator, but I truly look forward to working with you and with the subcommittee.

Senator **BRYAN**. Well, we wish you the very best.

This committee will stand adjourned.

Ms. **JONES-SMITH**. Thank you very much.

Senator **BRYAN**. Thank you.

[Whereupon, at 3:48 p.m., the hearing was adjourned.]

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